



STATE OF INDIANA
MITCHELL E. DANIELS, JR., Governor

PUBLIC ACCESS COUNSELOR
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July 26, 2012

Mr. Phillip D. Hinkle
7050 Camelot Court
Indianapolis, Indiana 46214

Re: Formal Complaint 12-FC-177; Alleged Violation of the Access to Public Records Act by the Town of Speedway

Dear Mr. Hinkle:

This advisory opinion is in response to your formal complaint alleging the Town of Speedway ("Town") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Barbara A. Lawrence, Town Manager, responded on behalf of the Town. Her response is enclosed for your reference.

BACKGROUND

In your formal complaint, you allege that on May 16, 2012, you submitted to the Town via certified U.S. Mail, a request for records pursuant to the APRA. Having not received a written response from the Town, on June 27, 2012, you submitted a follow-up written inquiry regarding your May 16, 2012 request and a request for additional records. As of July 2, 2012, the date filed your formal complaint with the Public Access Counselor's Office; you further allege that you have yet to receive a response from the Town.

In response to your formal complaint, Ms. Lawrence advised that you have requested documents from the Town regarding a complex matter of sewer rates and charges and how such matters apply to users outside the Town of Speedway. With your formal complaint, you provide copies of certain records that were provided. On March 2, 2012, Ms. Lawrence stated that you notified her via written correspondence that the documents that had previously been provided to you by the Town were not the records that were sought. In response, Ms. Lawrence worked with the Town's legal counsel to identify if there were other documents available. On March 27, 2012, Ms. Lawrence believes that the information was provided to you via e-mail. Copies of the records that were attempted to be sent are enclosed for your reference.

On May 17, 2012, Ms. Lawrence was surprised to receive your correspondence, as she believed that the records had already been provided. On June 7, 2012, Ms.

Lawrence spoke with you, at which point you inquired about the records. Ms. Lawrence informed you that the records had been sent, to which you responded you had not received anything. Ms. Lawrence at that time pledged to forward you additional copies. The records were forwarded to both your home and legislative e-mail accounts on June 15, 2012. Your request that was submitted to the Town on June 27, 2012 was received at a time when Mrs. Lawrence was out of the office on vacation. When Mrs. Lawrence returned to the office on July 9, 2012, the formal complaint that you had filed had already arrived. Mr. Lawrence provides that it was in no way her intent to deny you access to the requested records. She has enclosed hard copies of all records that you had requested, given that the e-mail communication has not been successful.

ANALYSIS

The public policy of the APRA states that “(p)roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information.” *See* I.C. § 5-14-3-1. The Town is a public agency for the purposes of the APRA. *See* I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy the Town’s public records during regular business hours unless the records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. *See* I.C. § 5-14-3-3(a).

A request for records may be oral or written. *See* I.C. § 5-14-3-3(a); § 5-14-3-9(c). If the request is delivered in person and the agency does not respond within twenty-four hours, the request is deemed denied. *See* I.C. § 5-14-3-9(a). If the request is delivered by mail or facsimile and the agency does not respond to the request within seven days of receipt, the request is deemed denied. *See* I.C. § 5-14-3-9(b). A response from the public agency could be an acknowledgement that the request has been received and information regarding how or when the agency intends to comply. Here, your initial written request for records was submitted on May 16, 2012, that was received by the Town on May 17, 2012. As such, the Town was required to respond in writing, and at a minimum, acknowledge your request, by May 25, 2012. As the Town failed to respond in writing pursuant to the guidelines established by section 9, it is my opinion that it acted contrary to the APRA. As to your hand-delivered written request for records that was received by the Town on June 27, 2012, the Town was required to respond, in writing, within twenty-four hours of receipt and acted contrary to section 9 of the APRA when it failed to do so. *See Opinions of the Public Access Counselor 05-FC-176; 11-FC-84; 11-FC-308; 12-FC-63; 12-FC-162.* As the Town has now provided all records that are responsive to your request, I trust that this is in satisfaction of your complaint.

CONCLUSION

For the foregoing reasons, it is my opinion that the Town acted contrary to the requirements of the APRA by failing to respond in compliance with section 9 to your requests that were submitted on May 17, 2012 and June 27, 2012.

Best regards,

A handwritten signature in black ink, appearing to read "J. Hoage". The signature is written in a cursive style with a large initial "J" and a vertical line for the "H".

Joseph B. Hoage
Public Access Counselor

cc: Barbara A. Lawrence