



STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

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April 30, 2012

Wayne A. Langman
2393 North Tabortown Street
Terre Haute, Indiana 47803-9688

Re: Formal Complaint 12-FC-89; Alleged Violation of the Access to Public Records Act by the Town of Seelyville

Dear Mr. Langman:

This advisory opinion is in response to your formal complaint alleging the Town of Seelyville ("Town") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Richard J. Shagley II, Attorney, responded on behalf of the Town. His response is enclosed for your reference.

BACKGROUND

On October 20, 2011, you verbally requested access to certain records of the Town from Tamara Caton, the Town's then Clerk-Treasurer. On October 24, 2011, you inquired with the Clerk-Treasurer regarding the status of your request, to which you were informed that the Town had not decided on any action as of yet. On December 14, 2011, you hand-delivered a written request to the Town Council and the Clerk and thereafter, submitted the request via Registered U.S. Mail.

On March 20, 2012, you received correspondence from the Town's attorney stating that the Town was in the process of compiling the records that were requested. You believe that the Town has taken an unreasonable period of time to produce the records that were responsive to your request and was intentionally delaying their release.

In response to your formal complaint, Mr. Shagley advised that on December 13, 2011, you presented to the Town Council a "wish list" of documents that you requested the Town provide you with. You indicated at that time you would be mailing a copy of the list to the Town Council, which it thereafter received. Upon being presented with the list, Mr. Shagley informed you that he would review the request and respond accordingly. Because the current Clerk-Treasurer, Tamara Caton, was not re-elected, she was not included in the discussions regarding your request. Due to the expansive nature of your request, it was clear that it would take some time to respond to it. Your written request submitted on December 13, 2011 was your first formal request. You have previously

submitted informal verbal requests, which Mr. Shagley provided that to the best of his knowledge, went unanswered.

Prior to the December meeting, the Town went through a contested party convention and November election. The new Clerk-Treasurer took office on January 1, 2012. Since January 1, 2012, the Town Council and Clerk-Treasurer had been involved in litigation against one another. As a result, communication between the Council and Clerk-Treasurer has been strained. Since January 1, 2012, the Town Council was under the impression that all information was being provided to you based on your frequent visits to the Clerk-Treasurer's Office. Regardless, Mr. Shagley was notified by the Clerk-Treasurer that all records would be available to him on April 27, 2012. Upon Mr. Shagley's receipt of the records, he would be in contact with you to arrange a meeting to allow you to review and/or provide copies of the requested records.

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). Under the APRA, when a request is made in writing and the agency denies the request, the agency must deny the request in writing and include a statement of the specific exemption or exemptions authorizing the withholding of all or part of the record and the name and title or position of the person responsible for the denial. *See* I.C. § 5-14-3-9(c). 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.

The APRA does not prescribe timeframes for the actual production of records. The public access counselor has stated repeatedly that records must be produced within a reasonable period of time, based on the facts and circumstances of the request. Considering factors such as the nature of the requests (whether they are broad or narrow), how old the records are, and whether the records must be reviewed and edited to delete nondisclosable material is necessary to determine whether the agency has produced records within a reasonable timeframe. The APRA requires an agency to separate and/or redact confidential information in public records before making the disclosable information available for inspection and copying. *See* I.C. § 5-14-3-6(a). Section 7 of the APRA requires a public agency to regulate any material interference with the regular



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discharge of the functions or duties of the public agency or public employees. *See* I.C. § 5-14-3-7(a). However, Section 7 does not operate to deny to any person the rights secured by Section 3 of the Access to Public Records Act. *See* I.C. § 5-14-3-7(c). The ultimate burden lies with the public agency to show the time period for producing documents is reasonable. *See Opinion of the Public Access Counselor 02-FC-45.*

Your original verbal request occurred on October 20, 2011. You thereafter presented a written request for records on December 14, 2011. It is not evident from your formal complaint whether your verbal request submitted in October 2011 was identical to your written request submitted in December 2011. Your December 2011 request was comprised of fourteen (14) separate requests to the Town and twelve (12) requests to the Town's Water Utility. During the interim of your request, a new Clerk-Treasurer was elected, along with two of three Town Council members. In addition, the Town Council and Clerk-Treasurer are currently involved in litigation that has resulted in strained communication between the two entities. Although I am mindful of the issues that arise during the transition period between elected officials and the litigation that currently exists between the Town agencies, over four months has passed since your original written request. Further, if your October 2011 oral request was identical to your December 2011 written request, over six months has passed in which the Town has failed to produce any records in response. Although your request was quite board, it would appear that some of the records would have been able to be provided within a brief period of time without involving an increased burden to the Town (i.e. 2011 FY Budget, the current salary and compensation ordinance, etc..).

This office has often suggested a public agency make portions of a response available from time to time when a large number of documents are being reviewed for disclosure. *See Opinions of the Public Access Counselor 06-FC-184; 08-FC-56; 11-FC-172.* While I have no doubt the certain items in your request would involve a significant time commitment on behalf of the Town to produce, for the Town not to provide any records in response to your request for over four months is in my opinion unreasonable and in violation of the APRA. As Mr. Shagley has now advised that the Town will soon be in receipt from the Clerk-Treasurer all records that are responsive to your request, I trust that the records will be provided shortly and that this is in satisfaction of your complaint.

CONCLUSION

For the foregoing reasons, it is my opinion that the Town violated the APRA by failing to provide all records in response to your request in a reasonable period of time.

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 distinct "Hoage" at the end.

Joseph B. Hoage
Public Access Counselor

cc: Richard J. Shagley II