



STATE OF INDIANA

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March 2, 2009

John Davis
204 North Lafayette Street
Cloverdale, Indiana 46120

Re: Formal Complaint 09-FC-34; Alleged Violation of the Access to Public Records Act by the Town of Cloverdale

Dear Mr. Davis:

This advisory opinion is in response to your formal complaint alleging the Town of Cloverdale ("Town") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by failing to respond to your request for access to records. It is my opinion the Town violated the APRA by failing to respond to the request within twenty-four hours.

BACKGROUND

You allege that on December 29, 2008 you hand delivered to the Town a request for access to records. You allege you did not receive a response to the request within twenty-four hours of the time of your request. You later inquired as to the status of the request and were told it was forwarded to the town attorney. You filed the complaint on January 29, 2009.

The Town responded to the complaint by electronic mail message dated February 13 from attorney Allan Yackey. Mr. Yackey indicates the Town Clerk Treasurer told him the delay in providing you the requested information was miscommunication or misunderstanding. The Clerk Treasurer relays to Mr. Yackey that she has now provided you with the records. Mr. Yackey indicates that he is not the attorney for the Clerk Treasurer but has conveyed the basic requirements of the APRA to her and suggested she contact her own attorney regarding such matters.

ANALYSIS

The public policy of the APRA states, "[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." I.C. § 5-14-3-1. The Town is clearly a public agency for the purposes of the APRA. I.C. § 5-14-3-2(m). Accordingly, any person has the right to inspect and copy the public records of

the Town during regular business hours unless the public records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. I.C. § 5-14-3-3(a).

A request for records may be oral or written. 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 to the request within twenty-four hours of receipt, the request is deemed denied. I.C. § 5-14-3-9(a).

A response could be an acknowledgement that the request has been received and information regarding how or when the agency intends to comply. There are no prescribed timeframes when the records must be produced by a public agency. A public agency is required to regulate any material interference with the regular discharge of the functions or duties of the public agency or public employees. 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. I.C. § 5-14-3-7(c). Former public access counselors and I have opined that records must be produced within a reasonable period of time, based on the facts and circumstances.

Here, you allege you delivered the request on December 29. The Town Clerk Treasurer had the duty to respond to the request within twenty-four hours of receipt, or by the same time the next business day. I.C. § 5-14-3-9(a). By failing to do so, the Town violated the APRA. If the Town has now provided you the records you requested, the Town has not otherwise violated the APRA.

CONCLUSION

For the foregoing reasons, it is my opinion the Town violated the APRA by failing to respond to the request within twenty-four hours.

Best regards,



Heather Willis Neal
Public Access Counselor

Cc: Allan Yackey, Attorney at Law
Patti Truax, Town of Cloverdale Clerk Treasurer
Don Sublett, Town of Cloverdale