



STATE OF INDIANA

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November 18, 2008

Bernard Seegers
16413 North 400 West
Wheatfield, Indiana 46392

Re: Formal Complaint 08-FC-224; Alleged Violation of the Access to Public Records Act by the Town of Wheatfield

Dear Mr. Seegers:

This advisory opinion is in response to your formal complaint alleging the Town of Wheatfield ("Town") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by denying you access to records. It is my opinion the Town violated the APRA.

BACKGROUND

You allege that on September 10, 2008 you submitted a request to the Town for access to records. You allege that the Town denied you access and indicated you would need a court order to be granted access to the records. You filed this complaint on October 9, and my office returned it to you for more information. My office then accepted the complaint on October 21.

My office sent a copy of your complaint to the Town and invited the Town to respond. To date my office has not received a response to the complaint.

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).

The APRA exists to allow persons access to inspect and copy records of a public agency. The APRA operates independently of the discovery process. Nothing in the

APRA requires a court order for an individual to be permitted access to public records, unless the records are declared confidential under I.C. § 5-14-3-4(a). The Town bears the burden of proof to sustain the denial of access on the basis the records are confidential. I do not have information from the Town asserting the records are confidential. If the records are not confidential under I.C. § 5-14-3-4(a) or otherwise nondisclosable at the discretion of the Town under I.C. § 5-14-3-4(b), the Town should provide you access to the records.

CONCLUSION

For the foregoing reasons, it is my opinion the Town violated the APRA by denying you access to records it has not asserted are confidential.

Best regards,



Heather Willis Neal
Public Access Counselor

Cc: Don Gear, Town of Wheatfield