

December 15, 2003

Mr. Daniel Hoagland
1114 Clear Lake Drive
Fremont, Indiana 46737

*Re: Formal Complaint 03-FC-122: Alleged Violation of the Access to Public Records Act
by the Town of Clear Lake*

Dear Mr. Hoagland:

This is in response to your formal complaint, received on November 17, 2003, wherein you allege that the Town of Clear Lake (Town) violated the Indiana Access to Public Records Act (APRA) when it denied you records in response to your public records request. The Town has submitted a response to your complaint, and that response is enclosed for your reference. For the reasons set forth below, it is my opinion that the Town did not violate the APRA.

BACKGROUND

Your complaint challenges the Town's response to two separate records requests. The first denial is alleged to have occurred on October 23, 2003. According to your complaint, you requested that the Clerk-Treasurer provide you with a printed copy of the Town's electronic mailing list of property owners, and with the accounting ledger of the Town's legal defense fund. You do not state when or in what manner you made that request; however, the Town's response suggests that the request was made orally and in person on that same date. According to both your complaint and the Town's response, the Clerk-Treasurer apparently sought to comply with part or all of your request, but did not complete production at that time.¹ The second denial is alleged to have occurred on November 8, 2003. According to your complaint, on this occasion you requested copies of the Town's zoning ordinance(s) or "improvement location permits," BZA meeting minutes, and planning commission records. Again, your complaint does not state when or in what manner you made that request; however the Town's response again suggests that the request was made orally and in person on that date, which was a Saturday. Apparently,

¹ It is not clear from the documents before me whether the Clerk-Treasurer was unable to complete production or refused to complete production. Your complaint states that "she physically ripped" one document out of your hands. The Town's response indicates that she spent several hours with you on October 23, 2003, seeking to accommodate your request, but became frustrated and requested that you leave after you became "angry and intimidating." I do not reach these competing allegations of personal impropriety, and the disposition of this complaint does not take them into consideration.

the Clerk-Treasurer's office does not maintain regular office hours on Saturday and the Clerk-Treasurer was not present when you appeared to make your request.

In response to your complaint, the Town suggests but does not expressly aver that on each occasion you were asked to reduce your records request to writing. The Town further asserts in response to your complaint that it will provide you with copies of the records you request if you reduce that request to writing and state with particularity the records you are requesting. According to the Town, the Clerk-Treasurer maintains the records you seek, and that position and office are part-time and maintain part-time business hours.

ANALYSIS

Indiana Code 5-14-3-3 and 5-14-3-9 govern your right to inspect or copy public records of public agencies. You may make your request orally or in writing, and upon receipt of a request in either format, the public agency is required to respond to your request within a specific period of time. Ind. Code § 5-14-3-9. A timely response to the request does not mean that the public agency must expressly decline to produce or produce the documents that are responsive to the request within the statutorily prescribed time period. Of course, a public agency is free to take either of those actions, but may also comply with its response obligation under the statute by acknowledging receipt of the request and indicating the specific actions the agency is taking toward production. When a public records request is made orally and in person, the public agency is required to respond to that request within twenty-four (24) hours of receipt of the request, and that response may be made orally. IC 5-14-3-9(c). If that period of time elapses without a response, the request is presumed denied. IC 5-14-3-9(a). Further, upon receiving a request for public records, the public agency has the discretion to request that you reduce your records request to writing and to identify with reasonable particularity the record(s) you are requesting. IC 5-14-3-3(a). The APRA does not specify a time for production or inspection of responsive records, but merely requires that records be produced within a reasonable time of the request. What constitutes a reasonable time will vary with the nature of the request and the office from which the records are requested. Production need not interfere with the regular business of the public agency.

I cannot find that the Town violated the APRA with regard to either request in this matter. Based on the information presented, both requests were made in person. The latter request; however, does not appear to have been made during the normal business hours of the Town Clerk-Treasurer. While the first request was made during the normal business hours of the office, it appears that it was immediately responded to through partial production or inspection, and was further responded to at that time by the Town exercising its discretion to require that you reduce your request to writing for further production or inspection of documents responsive to your request. To the extent your complaint challenges the Town's failure to produce all responsive documents at the times you made your request, I find that the Town was not obligated to do so under the APRA. The APRA authorizes the Town to require that you reduce your

request to writing.² Moreover, it does not require that the Town make the production or allow the inspection immediately, but rather only within a reasonable time. I note that the Town offices are open only three days a week, and then only for part-time hours. Certainly, the Town is not required to consume these limited hours responding to your records request in lieu of conducting its regular business.

That said, I note that the Town does not assert that the records you seek are exempt from production or inspection. Moreover, it does not appear that the records requested are voluminous, would come from multiple sources that must be exhaustively searched, or that production should otherwise be overwhelming to the Town Clerk-Treasurer. While the Town may require that you reduce your request to writing and may thereafter produce responsive records in whole or in parts "as time permits," its failure to do so within a reasonable time of receiving your written request may be found to violate the APRA in any future complaint you bring with this office or in the courts.

CONCLUSION

For the reasons set forth above, I find that the Town did not violate the APRA when it failed to produce or permit you to inspect records responsive to your requests of October 23, 2003, and November 8, 2003.

Sincerely,

Michael A. Hurst
Public Access Counselor

cc: Mr. Donald J. Stuckey

² If you reduce your records request to writing as required by the Town, Indiana Code 5-14-3-9 requires that the Town respond in writing (that is, at a minimum, acknowledge your request and indicate its intentions toward production), within seven (7) days of receipt (if delivered by mail or facsimile) or within twenty-four (24) hours of receipt (if personally hand-delivered).