

September 15, 2004

Mr. Louis A. Valderas  
210 East Willow Drive  
South Bend, IN 46637

*Re: Formal Complaint 04-FC-145; Alleged Violation of the Open Door Law and  
Access to Public Records Act by the Roseland Town Council and Clerk Treasurer*

Dear Mr. Valderas:

This is in response to your formal complaint alleging that the Roseland Town Council (“Council”) violated the Open Door Law (“ODL”) by meeting in Stevensville, Michigan. In addition, you allege that the Roseland Clerk Treasurer violated the Access to Public Records Act (“APRA”) by denying you access to council meeting minutes. I find that the Roseland Town Council did not violate the Open Door Law, but the Clerk Treasurer did deny you a record in violation of the Access to Public Records Act.

#### BACKGROUND

On Wednesday, August 11, 2004, the Council posted a notice with the following heading: *SPECIAL MEETING OF THE ROSELAND TOWN COUNCIL/BIT OF SWISS— STEVENSVILLE, MI, SAT. 8-14 @8:30 A.M.* Bit of Swiss is apparently an eatery in Stevensville, which is about 40 miles north of South Bend. The agenda items were as follows: I. Call to Order; II. Roll Call; and III. Social Gathering. Also, around August 6 you requested from Clerk Treasurer Cheryl Gridley a copy of the July Council minutes. You allege that Ms. Gridley denied you access to the minutes because the Council had not yet approved them.

You filed your complaint on August 16, 2004. In your complaint, you question whether the Council could “do this” under the Open Door Law. I take your complaint to question whether the Council could meet in Michigan, approximately 40 miles from the location of the Town of Roseland. You also stated that you did not know whether the Council posted notice 48 hours prior to the Saturday meeting. You also allege in your complaint that Clerk Treasurer Gridley violated the APRA when she denied you the Council minutes that were not yet approved by the Council. I forwarded a copy of your complaint to Clerk Treasurer Gridley, whose

response on behalf of herself and the Council is enclosed for your reference. In her response, she states that with respect to the gathering of the Council in Stevensville, Michigan, the notice was posted on August 11, and the Council, by posting its notice, had intended to announce that it would be gathering solely for social purposes. No meeting was intended or took place. Ms. Gridley also responds that she had been misinformed that draft minutes were not disclosable, and intends to disclose them in the future upon request.

## ANALYSIS

### *Open Door Law*

The General Assembly has stated that the purpose of the Open Door Law is that the official action of public agencies be conducted and taken openly, unless otherwise expressly provided by statute, in order that the people may be fully informed. IC 5-14-1.5-1. In this scenario, a meeting of the Council would have occurred if a majority of the Council (two members) had gathered for the purpose of taking official action upon public business. It does not include any social or chance gathering not intended to avoid the Open Door Law. IC 5-14-1.5-2(c).

The record is muddied by the fact that the Council did post a notice that contained many of the earmarks of an official Council meeting. Although the Council acknowledged that it did not have to post a notice since it did not intend to conduct official business, the Council's posting the notice confused at least one member of the public who has an interest in Council business. I find that the posting of the notice did not serve the public's interest in understanding the business of the Council, and the notice did not meet the spirit of the Open Door Law. However, the purpose of the gathering was expressly to not take official action on public business; rather, it was intended all along to be merely a social gathering not intended to avoid the Open Door Law. Ms. Gridley also stated that the Council did not, in fact, discuss official business. Hence, it was not a meeting, and the issue of the place of the gathering is not relevant to this complaint. Accordingly, I offer no opinion on whether a governing body may gather at a remote location, but express doubt whether such a remote meeting location would permit the public to observe and record a meeting. Assuming that the gathering was not, in fact, a meeting, no violation of the ODL occurred.

### *Access to Public Records Act*

Any person may inspect and copy the public records of any public agency during the regular business hours of the agency, except as provided in specific exemptions under the APRA. IC 5-14-3-3(a). As I stated in *Opinion of the Public Access Counselor 04-FC-143*, under the same facts as presented in this complaint, draft minutes of the Council are to be disclosed, irrespective of whether the Council has met to approve the minutes. Ms. Gridley has stated her awareness of the law on this point, and is willing to produce the draft minutes to you now and in the future. As I had stated in the previous complaint, the Clerk Treasurer's denial of your request for draft minutes was a violation of the Access to Public Records Act.

## CONCLUSION

For the foregoing reasons, I find that the Roseland Town Council violated the spirit, but not the letter of the Open Door Law. I also find that the Roseland Clerk Treasurer violated the Access to Public Records Act when she denied you access to the Council's draft minutes.

Sincerely,

Karen Davis  
Public Access Counselor

cc: Ms. Cheryl Gridley