

October 12, 2004

Ms. Teresia Valderas
210 E. Willow Dr.
South Bend, IN 46637

Re: Formal Complaint 04-FC-164; Alleged Violation of the Access to Public Records Act by the Roseland Town Council

Dear Ms. Valderas:

This is in response to your formal complaint alleging that the Roseland Town Council ("Council") violated the Access to Public Records by failing to allow you access to public records. For the following reasons, I find that the Roseland Town Council did not violate the Access to Public Records Act.

BACKGROUND

You allege that on September 10, 2004, you went to the Clerk of the Roseland Town Council and "asked about" ordinances for driveway permits. You state that neither the Clerk nor the Deputy Clerk was able to find those ordinances. You further allege that the Council has a history of denying applications and of denying access to the ordinance book.

You filed a formal complaint, which was received by this office on September 10, 2004. I forwarded a copy of your complaint to the Roseland Town Council, and Ms. Cheryl Gridley, Clerk-Treasurer of Roseland, responded. I have enclosed a copy of that response for your reference.

Ms. Gridley advises this office that the ordinance book is always available, and that the Council has never refused anyone whom has requested access to the book. Ms. Gridley further states that the Clerk's Office attempted to find the specific ordinances governing driveways, but was unable to find the ordinance at that time. Ms. Gridley states that you never asked to review the book, but that you may look at it any time the office is open. Finally, Ms. Gridley states that

she believes your allegation regarding the Council's history of denying applications for zoning is incorrect, and furthermore, is not an issue governed by the Access to Public Records Act.

ANALYSIS

I first address your allegation that the Council has a history of denying applications for zoning. Ms. Gridley is correct that this allegation is not an Access to Public Records Act issue. As this is not an issue for this office to determine, I decline to further address this matter, and suggest that you direct such concerns to your local Zoning Commission.

The Roseland Town Council is a public agency, and as such, any person may inspect and copy its public records during the regular business hours of the agency, unless the record is confidential or otherwise nondisclosable under I.C. §5-14-3-4. I.C. §5-14-3-3(a). Pursuant to the Access to Public Records Act, a public agency is required to respond to requests for public records that are maintained or filed by or with those agencies. A request for access to a public record must be reasonably particular so that the agency to which the request has been made can locate the requested documents. I.C. §5-14-3-3(a).

Your complaint states that you asked about ordinances regarding driveway permits.¹ You do not specify by ordinance number which ordinance you want to see; however, it is my opinion that your request to inspect ordinances regarding driveway permits is particular enough that the Council can determine to which record you are requesting access. Therefore, the question is whether the Council is required to find the particular ordinance you request for you, or whether they have fulfilled their obligation to allow you to inspect records by providing you access to the ordinance book.

In *Opinion of the Public Access Counselor 01-FC-70*, a record requestor sought copies of University telephone directories for academic years 1980 through 2001, and in particular, sought the portions of those directories that listed the "Office of Traffic and Safety," "Police," and "the like." The University responded that the directories were located in the University's library, and that the requestor was welcome to personally review and obtain the information there. According to this office, the University's response implied that it would not search for and compile the listings for the requestor. This office agreed that the University was not obligated to search the telephone directories itself to find the particular information sought.

In *Opinion of the Public Access Counselor 00-FC-15*, a record requestor sought from the Brownsburg Town Court the opportunity to inspect the full record of every case in which a person had been charged with a traffic offense, other than a non-moving violation, for the last calendar year. Holding that the request was reasonably particular, this office also stated that the "court is under no obligation under the APRA to search their records and segregate the moving and nonmoving offense files, only to provide you with an opportunity to review those files."

¹ You do not specify whether your request was to inspect the ordinances, or to obtain a copy of them; however, because you state that the Council never has the ordinance book available for the public to see, I assume that your complaint alleges a denial to inspect those ordinances, rather than have a copy made.

It is my opinion that the Clerk is not required to research the ordinance book to find the particular ordinances you request. Rather, allowing access to the ordinance book fulfills the Council's obligation to allow inspection of its public records. You and the Clerk both acknowledge that the Clerk was unable to find the driveway permit ordinances; however, there is some discrepancy regarding whether or not the Clerk made the ordinance book available to you. You state that she did not; the Clerk states that she did. I find that if the Clerk allowed you access to the ordinance book, she has fulfilled her obligation to allow you to inspect those public records.

CONCLUSION

For the foregoing reasons, I find that the Roseland Town Council did not violate the Access to Public Records Act.

Sincerely,

Karen Davis
Public Access Counselor

cc: Ms. Cheryl Gridley