

September 22, 2004

Mr. Harry Graves  
2204 Blue Creek Road  
Brookville, IN 47012

*Re: Formal Complaint 04-FC-167; Alleged Violation of the Access to Public Records Act by the Franklin County Plan Commission*

Dear Mr. Graves:

This is in response to your formal complaint alleging that the Franklin County Plan Commission (“Commission”) violated the Access to Public Records Act by denying you access to public records. For the following reasons, I find that to the extent that the Franklin County Plan Commission failed to respond to your requests for information, it violated the Access to Public Records Act. I find that to the extent the Commission required a particular form for record requests, and that form does not allow for requests for other types of public documents maintained by the Commission, use of that form interferes with a person’s right to request records. Finally, I find that the Commission’s failure to date stamp requests for information is not a violation of the Access to Public Records Act.

#### BACKGROUND

On September 2, 2004, you submitted to the Franklin County Plan Commission six requests for access to public records. Specifically, you requested:

- The procedures for getting on the agenda to appear before the Franklin County Plan Commission and the Board of Zoning;
- The letter sent by Mr. Larry Franzman to attorney Melvin Wilhelm, which was referenced in Mr. Franzman’s May 18, 2004 letter to you;
- A copy of the 1965 Code Ordinance referenced in Mr. Franzman’s May 18, 2004 letter;
- Copies of all complaints against you;
- The verification report made from Mr. Franzman’s visual observations; and

- Records relating to the methodology used to determine if a vehicle or property is not operable and is without license when visual observation cannot be used without entering the property for proper verification.

Each request stated that it was being made pursuant to the Access to Public Records Act and also indicated that the requests were Freedom of Information Act requests (“FOIA”). Although the Commission took your requests as you submitted them, Larry Franzman, Executive Director of the Commission referenced a record request form which had been given to you before your September 2 requests were submitted. You allege that the form that the Commission gave to you for requests for access to public records does not allow for requests for the types of information you sought. Rather, the form provided by the Commission only allows for requests for deeds and other real estate related documents.

You state that your requests were supposed to be date stamped by the Commission when you submitted them. In support thereof, you provide a copy of “General Procedures for Processing FOIA Requests”, which appears to require that an agency date stamp FOIA requests it receives. You allege that the Commission failed to stamp your requests when you submitted them, and that failure is a violation of the Access to Public Records Act.

Having received no written response to your September 2 request, you submitted a formal complaint. Your complaint was received by this office on September 15. I forwarded a copy of your complaint to the Commission, and Mr. Mel Wilhelm, attorney, responded on its behalf via telephone. Mr. Wilhelm acknowledged that the Commission’s form for access to public records does not allow for requests for all types of public documents maintained by the Commission. He advised that the form is being altered to allow requests for all public records maintained by the Commission. Mr. Wilhelm also states that he is unfamiliar with the “General procedures for Processing FOIA Requests” you provided, but states that it appears to refer to federal FOIA requests, not those covered under the state’s Access to Public Records Act. With respect to the Commission’s response to your requests, Mr. Wilhelm advises generally that he believes that the Commission responded to your requests in writing in a timely manner.

## ANALYSIS

Franklin County Plan Commission is a public agency for the purposes of the Access to Public Records Act. I.C. §5-14-3-2. Accordingly, any person may inspect and copy the public records during regular business hours, unless the records are excepted from disclosure as confidential or otherwise nondisclosable under I.C. §5-14-3-4. I.C. §5-14-3-3(a).

It is the responsibility of the public agency to respond to requests for access to public records within a specified period of time. The Access to Public Records Act requires a response within twenty-four (24) hours of the agency’s receipt of the request if a person making the request is physically present in the office or makes the request by phone. If that period of time elapses without a response, the request is presumed denied. I.C. §5-14-3-9(a). Furthermore, if a request is submitted in writing, the response must also be in writing. I.C. §5-14-3-9(c).

A timely response to the request need not include production of the requested documents, or expressly decline to produce documents responsive to the request. What is contemplated in terms of a response to a request is a communication with the requestor. A public agency may 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 of the requested documents.

According to your complaint, your written requests for access to documents were submitted to the Commission in person. Therefore, the Commission was required to respond to your requests, in writing, within twenty-four (24) hours of receiving them. Mr. Wilhelm generally states that he believes that the Commission responded in writing to your requests. However, during a telephone conversation today, you verified to this office that the Commission had not responded to you in writing. The Commission could easily have verified that it responded to your requests in writing by providing a copy of the responses that were sent to you. They have not done so. Therefore, to the extent that the Commission failed to respond, in writing, to your requests within twenty-four (24) hours of receiving it, I find that the failure to respond is a violation of the Access to Public Records Act.

You also state that when you submitted your written requests, Mr. Franzman referenced a request form that had been provided to you some time ago. Pursuant to I.C. §5-14-3-3(a)(2), a public agency, in its discretion, may require a request for access to public records be made in a form provided by the agency. However, a public agency may not deny or interfere with the exercise of the right to inspect and copy the public records of a public agency. I.C. §5-14-3-3(b).

Upon review of the form provided to you, I find, and Mr. Wilhelm acknowledges, that it allows a requestor to request access only to a certain type of information, not all public records maintained by the agency. Because the Commission failed to respond to your requests, I do not know if your request was or would have been denied on the basis that it was not submitted on the Commission's form. To the extent that the Commission requires a person to submit requests for records on its form, and the form allows a person to request only a certain type or types of records and excludes requests for other records, use of that form denies and interferes with the exercise of a person's right to inspect and copy the public records of the agency. Therefore, required use of such a form is a violation of the Access to Public Records Act. That said, I note that Mr. Wilhelm has stated that the form is now being altered to allow for requests for all types of public records maintained by the Commission.

You further allege that the Commission requires that the records request form be typewritten. While an agency may require that a request for public records be submitted in writing, it cannot require that the request be typewritten. Few people have access to the means with which to submit a typewritten request. Therefore, requiring a request be in such a format denies and interferes with the exercise of a person's right to inspect and copy the public records of a public agency.

You state that "General Procedures for Processing FOIA Requests", a copy of which you provided to this office, requires that FOIA requests be date stamped upon the agency's receipt of the request. You allege that the failure of the Commission to date stamp your requests is a

violation of the Access to Public Records Act. The requests that you submitted to the Commission, which state that they are submitted pursuant to the Access to Public Records Act, indicate that they are also FOIA requests, as "FOIA" is written across them. FOIA requests, or Freedom of Information Act requests, are governed by federal law; this office does not address alleged violations of federal law. While the Freedom of Information Act may require requests be date stamped, the state's Access to Public Records Act does not. Therefore, while I decline to opine as to whether failure to date stamp a request is a violation of FOIA, I find that failure is not a violation of the Access to Public Records Act.

#### CONCLUSION

For the foregoing reasons, I find that to the extent that the Franklin County Plan Commission failed to respond in writing to your requests for access to public records within twenty-four (24) hours of its receipt, it violated the Access to Public Records Act. To the extent that the Commission requires a person to submit requests for records on a form, and the form allows a person to request only a certain type or types of records and excludes requests for other records, required use of such a form is a violation of the Access to Public Records Act. I decline to opine with respect to whether the failure to date stamp a request is a violation of the federal Freedom of Information Act, but I find that failure to date stamp a request is not a violation of the state Access to Public Records Act.

Sincerely,

Karen Davis  
Public Access Counselor

cc: Mr. Melvin Wilhelm