

August 11, 2005

Mr. Arnold H. Gardner
122 Murray Street
South Bend, IN 46637

Re: Formal Complaint 05-FC-140; Alleged Violation of the Access to Public Records Act by the Roseland Town Council and Zoning Commissioner

Dear Mr. Gardner:

This is in response to your formal complaint alleging that the Roseland Town Council and Zoning Commissioner ("Town") violated the Access to Public Records Act ("APRA") by failing to give you records. I find that the Town violated the Access to Public Records Act.

BACKGROUND

On June 16, 2005, you mailed a letter containing requests for information to the Town. You requested the plan and a copy of the permit for various specified easements. The response from the Town Clerk Treasurer, Cheryl Gridley, dated July 5, 2005, was as follows:

"I will not be able to locate the information that you requested today. Per Council please have your attorney contact us or maybe since these records should be on file thru the Building Department that it may be easier to obtain them from their office. Sorry for the inconvenience."

You filed your formal complaint on July 18, 2005. I sent a copy of your complaint to the Town, but have not received a response.

ANALYSIS

Any person may inspect and copy the public records of any public agency during the agency's regular business hours, except as provided in section 4 of the APRA. Ind. Code 5-14-3-3(a). If received by mail, the request must be acknowledged by the agency within seven (7)

days of the agency's receipt of the request. IC 5-14-3-9(b). If the agency fails to respond timely, the request is deemed denied. IC 5-14-3-9(b).

The Town's response, if first sent on July 5, 2005, was well past seven days. Also, the Town's letter was deficient under the APRA for two reasons. First, a public agency may not require that a person seek records through an attorney, even if the requester is in litigation with the public agency, and I do not assume that to be the case here. Therefore, the Town interfered with the exercise of your right to request a record under the APRA by requiring you to seek the records through your attorney. IC 5-14-3-3(b).

Second, the Town should not have implied that the only way for you to receive the record in a timely manner is through a different department of the Town. Although an agency may regulate material interference with the regular discharge of the functions or duties of the public agency, IC 5-14-3-7(a), the Town had an obligation, if it had responsive records, to produce them within a reasonable period of time. It was probably not unreasonable for Ms. Gridley to indicate to you that she could not locate the information "today" (although she may well have had your request for several weeks by the date of her letter). The public agency that receives a request should estimate the time that it will take to locate and copy the records, and if the period of time is otherwise reasonable, the agency could suggest alternate ways to secure the records more quickly. However, the July 5 letter falls short of suggesting better means of obtaining the records; rather, it implies a desire not to comply.

CONCLUSION

For the foregoing reasons, I find that the Roseland Town Council and Zoning Commissioner violated the Access to Public Records Act.

Sincerely,

Karen Davis
Public Access Counselor

cc: Cheryl Gridley