

July 31, 2006

Sent Via Facsimile

Mr. Ian M. Steele
221 Pokagon Trail
Michiana Shores, IN 46360

Re: Formal Complaint 06-FC-111; Alleged Violation of the Access to Public Records Act by the Town of Michiana Shores

Dear Mr. Steele:

This is in response to your formal complaint alleging that the Town of Michiana Shores (“Town”) violated the Access to Public Records Act by failing to give you all the records you requested. I find that the Town should clarify how it intends to disclose records in response to a multi-part request, but otherwise has not violated the Access to Public Records Act.

BACKGROUND

You hand-delivered on May 30, 2006, a request for records of the Town. Your request was in 18 parts, with paragraphs denoted by small Arabic letter. You indicated that you could be reached via telephone and electronic mail, for purposes of the Town letting you know the cost of copying and when you could retrieve the records from the Town.

You stated in your formal complaint that the Town has produced some of the records (items b, d, f, p, and r, although d and f were incomplete), but none of the other requests had been produced as of the date you sent your complaint, June 29. You believe that this is a *de facto* denial of the records.

I sent a copy of the complaint to Mr. Steven Millick, Clerk Treasurer of the Town. Mr. Millick sent a response, which I have enclosed for your reference. In his response and through copies of documentation, the Town had sent documents under cover of letters dated June 15, June 29, and July 14. The June 15 letter accompanied the records that you admitted receiving (at

least in part). The other letters were sent by the Town or received by you after you filed your complaint. None of the letters states that the Town was making a partial production of records.

ANALYSIS

Any person may inspect and copy the public records of any public agency, except as provided in section 4 of the Access to Public Records Act (“APRA”). Ind. Code 5-14-3-3(a). If a public agency receives a request for a record in person, the public agency is required to respond within 24 hours or the record is deemed denied. IC 5-14-3-9(a). If the public agency receives a request for a record via U.S. Mail or facsimile, the public agency is required to respond within seven calendar days, or the request is deemed denied. IC 5-14-3-9(b). If a request is made orally, either in person or by telephone, a public agency may deny the request orally. IC 5-14-3-9(c). However, if a request initially is made in writing, or if an oral request that has been denied is renewed in writing or by facsimile, a public agency may deny a written request for a record if the denial states the exemption or exemptions authorizing the public agency to withhold the record, and the name and title or position of the person responsible for the denial. IC 5-14-3-9(c).

A public agency is not required to compile or copy records within a time certain under the APRA. Rather, my office has stated that records should be produced within a time that is reasonable under the circumstances. A public agency shall regulate any material interference with the regular discharge of the functions or duties of the public agency or public employees. IC 5-14-3-7(a). However, this does not operate to deny to any person the rights secured by section 3 of the Access to Public Records Act. IC 5-14-3-7(c).

You do not seem to take issue with either the time that the Town responded to your request or the time within which the records have been produced, although you believe that all the records should be readily available. In fact, I am aware that the Town is open part-time and is thus somewhat curtailed in its ability to produce records more timely as compared with other agencies that are staffed with several full-time office holders or staff. You seem to state that you believe that with the partial production of records, you have been denied the others that you requested.

I do not believe that the Town has been unreasonable in its production of records, and has, in fact, made some records available to you rather than waiting to have all requested records located and copied. This is precisely the sort of effort that shows the Town’s good faith while regulating material interference with the regular discharge of the functions or duties of the Town. However, I recommend that the Town include a statement in its letter indicating that it is still locating responsive documents and will make additional records available as they are located and copied.

CONCLUSION

For the foregoing reasons, I find that the Town of Michiana Shores should clarify when it is making a partial disclosure of records, but otherwise has not violated the Access to Public Records Act.

Sincerely,

Karen Davis
Public Access Counselor

cc: Steven Millick