

October 6, 2006

Stuart Showalter  
P.O. Box 374  
Lebanon, IN 46052-0374

*Re: Formal Complaint 06-FC-156; Alleged Violation of the Access to Public Records Act by the Thorntown Town Council*

Dear Mr. Showalter:

This is in response to your formal complaint alleging that the Thorntown Town Council (“Town”) violated the Access to Public Records Act by failing to follow-up in a timely manner regarding your request for records. I find that the Town did not timely produce records or indicate that no records existed that fit your request.

#### BACKGROUND

In your formal complaint, you enclosed a copy of your August 4, 2006 letter to the Town Council. You sought:

- Any written complaint that is subject to the notices from Marshal Woodard to Stuart Showalter dated 20 July 2006 received by you concerning the real estate at 725 West Main Street in Thorntown, IN.
- Any notes, memorandum or other documentation that would contain a record of any verbal communication between a complaining party and any member of the Thorntown Town Board concerning the real estate at 725 West Main Street in Thorntown, IN.
- Any written instrument from the Thorntown Town Board to the Thorntown Police Department requesting any action to be taken by the Thorntown Police Department concerning the real estate at 725 West Main Street in Thorntown, IN.
- Any notes, memorandum or other documentation that would contain a record of any verbal communication between any member of the Thorntown Town Board

and the Thorntown Police Department concerning the real estate at 725 West Main Street in Thorntown, IN.

In response, the Town issued a letter on August 10. In his letter, the town attorney J. David Cook stated that the Council had referred your letter to him for response. He advised you that he would give the letter due consideration and will advise the Town to provide you with all the information required by law to be given you, if the Town has not already disclosed the information.

In the formal complaint that you filed on September 5 with the Office of the Public Access Counselor, you allege that since your receipt of the August 10 letter, you have not received records or further correspondence.

I sent a copy of your complaint to the Town. Attorney Cy Gerde responded, a copy of which is enclosed for your reference. Mr. Gerde stated that he had just been retained by the Council as attorney for the Town. He has reviewed your request, and was informed by the Town that no records exist that are responsive to your request. No documentation supports that you were separately informed of this follow-up response.

#### 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 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). A response could be just an acknowledgement that the public agency has received the request, and some indication of how and when the agency intends to comply.

The Access to Public Records Act contains no provision specifying when a public agency is required to produce records. This office has advised that a public agency should produce its records within a reasonable period of time, under the facts and circumstances. If a public agency has no responsive records for a particular request, the public agency should clearly state that no records exist, and should so state within the reasonable time for production of records. What is reasonable depends on several factors, such as the scope of the request for records and whether fulfillment of the request involves searching for records that are stored off-site, as just two examples.

Here, your August 4 request received a timely response, since the Town responded by August 10, within six days of the date of your request and even timelier if the request was received after August 4. In addition, the substance of the response was compliant with the Access to Public Records Act. However, you allege that you have never received further correspondence, and Mr. Gerde’s response does not refute that assertion. Rather, the Town has now stated in its September 7 complaint response that it does not have responsive records, apparently for the first time. In addition, the Town has not sent this response sent to you. Hence, while the Town provided a timely initial response, its failure to timely follow-up with you appears to be without justification, and was in violation of the Access to Public Records Act.

## CONCLUSION

For the foregoing reasons, I find that the Town failed to timely inform you that no records existed that are responsive to your request.

Sincerely,

Karen Davis  
Public Access Counselor

cc: Cy Gerde