

March 27, 2006

John Davis
204 N. Lafayette
Cloverdale, IN 46120

Re: Formal Complaint 06-FC-45; Alleged Violation of the Access to Public Records Act by the Town of Cloverdale

Dear Mr. Davis:

This is in response to your formal complaint alleging that the Town of Cloverdale (“Town”) violated the Access to Public Records Act by failing to send its records as promised.

BACKGROUND

You filed your formal complaint on February 24, 2006, alleging that you hand-delivered a request for a record to the Town on February 14. You did not specify in your complaint the record that you had requested. The Town, you claim, has not responded nor has it produced the record. Upon further investigation, I determined that you had requested a copy of a letter from the Indiana State Fire Marshal stating that a person must be age 18 to be on a fire department. The letter was referred to in a public meeting by town council member Padgett, who also stated that council member Sublett was in possession of the document.

Mr. Don Sublett, the town council member who you named in your complaint, responded to your complaint. He declared that there was no hand-delivered request, and he was not clear what public record was being requested. Subsequently, Mr. Sublett sent me a copy of a letter to you dated March 10 in which he reiterates his confusion regarding precisely what record you requested, and enclosing a copy of an unaddressed letter from the Indiana Department of Homeland Security (“Department”) regarding a determination of certification that was “issued in error” by the Department. The letter further states that the subject “and his Fire Chief have been notified of this.” The letter recited that the certification would be reinstated when the individual turned 18.

After receiving this letter, you wrote me to say that you did not believe that this was the letter that you had requested.

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). A request must state the record being requested with reasonable particularity. IC 5-14-3-3(a). If the public agency receives a request for a record that is not stated with reasonable particularity, it is incumbent upon the public agency to seek clarification of the request.

A public agency that receives a request via hand-delivery is required to issue a response within 24 hours of the date that the request is received, or the request is deemed denied. IC 5-14-3-9(a). If the public agency does not have a record that is responsive to a request, the public agency should so state.

The Town, through Mr. Sublett, denies having received your request, and claims no knowledge regarding what record you are requesting. You state that you hand-delivered the request to the Town via the Town’s Clerk-Treasurer. I am not in a position to ascertain the facts, as my office is advisory only and does not resolve contested factual matters. If the Town received a hand-delivered request, it was bound to respond within 24 hours to acknowledge receipt of the request, and to seek clarification if needed. Failure to do this would be a violation of the Access to Public Records Act. I cannot find conclusively that the Town violated the APRA when it failed to respond to your request, although it is apparent that the Town did not issue a response.

The Town sent you a copy of a letter from the Department of Homeland Security, described above. The letter implies that a person younger than 18 may not be a certified firefighter. The Department of Homeland Security is home to the State Fire Marshal, who heads the Department’s Division of Fire and Building Safety. It is possible that the letter referred to in the public meeting is the same letter supplied to you. I recommend that Mr. Sublett contact you to tell you whether the Town has any other letter that is responsive to your request, or whether the letter he sent you is the same one that the Council referred to in the meeting.

CONCLUSION

For the foregoing reasons, I cannot conclusively determine whether the Town of Cloverdale violated the Access to Public Records Act. However, I recommend that the Town of Cloverdale communicate more clearly whether or not it has any other records that are responsive to your request.

Sincerely,

Karen Davis
Public Access Counselor

cc: Don Sublett