

June 20, 2007

Charles W. Schlesinger
395 N. 400 East
Valparaiso, IN 46383

Re: Formal Complaint 07-FC-135; Alleged Violation of the Access to Public Records Act by the Lake Station Clerk Treasurer

Dear Mr. Schlesinger:

This is in response to your formal complaint alleging that the Lake Station Clerk Treasurer ("Clerk") violated the Access to Public Records Act because the Clerk Treasurer failed to respond within 24 hours and because the Clerk Treasurer denied the records when the City responded. I find that the City is required to issue a response within 24 hours or the next business day after receipt of the request. I also find that the City's response that it possesses no responsive records is not a violation of the Access to Public Records Act.

BACKGROUND

You allege that the City failed to respond to your records request within 24 hours. You hand-delivered your request to the Clerk's office on May 8, 2007, at 10:13 a.m. You complain that you did not receive any response until the following day, May 9, at 2:36 p.m. The City called you on that date to inform you that it would be reviewing your request and responding at a later time. You requested thirteen different categories of records. The requests can be classified as one of two types: one for records of meetings of the police merit board, and one for disciplinary actions against specified police officers.

Once the City responded, on May 19, 2007, the City failed to give you disclosable records, which you allege was a denial. You contend that the request is directed to the City of Lake Station as a whole entity, and the records are within specific offices within the City.

I sent a copy of your complaint to the City. Clerk Treasurer Martha Kroledge stated that your request does not denote any time received, only the date. She confirmed that her office called your home on May 9 and told an individual there that the City would be working on the

request. Further, the City contends it did not deny your request for records; the City informed you that the records you requested are not in the possession or control of the Clerk Treasurer.

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 request for a record is hand-delivered to the agency, the request is deemed denied if the agency fails to respond within 24 hours of receiving the request. IC 5-14-3-9(a). This office has stated that the response must be issued within 24 hours, or the next business day if the office is closed during the 24 hour period following receipt of the request.

Here, the Clerk disputes that your request was received at any particular time because there is no notation of the time received. Ms. Kroledge does not directly dispute that your request was received in the morning of May 8, however. Also, Ms. Kroledge does not maintain that her office was closed at any time on the day of May 8, which I note was primary election day in Indiana this year. I find that if the Clerk failed to respond to your request within 24 hours of receiving the request, the request was deemed denied.

With respect to the City’s contention that the records are not in the possession or control of the clerk treasurer, you believe that the clerk has the obligation to search the City’s records for your request. You do not base this on any specific statutory duty. The clerk treasurer of a third class city is responsible for maintaining the records of the city legislative body. IC 36-4-10-4(1). In addition, the clerk treasurer maintains “all records required by law.” IC 36-4-10-4(2). If the personnel records and meeting records of the Lake State police commissioners merit board are statutorily required to be maintained by the Clerk Treasurer’s office, your complaint has merit. Generally, however, a public agency is not required to secure records that are not in the public agency’s possession or control in the absence of a specific statute.

CONCLUSION

For the foregoing reasons, I find that the City was required to issue a response within 24 hours or the next business day after receipt of the request. I also find that the City’s response that it possesses no responsive records is not a violation of the Access to Public Records Act.

Sincerely,

Karen Davis
Public Access Counselor

cc: Martha D. Kroledge