

June 15, 2007

Thomas J. Ritz
3094 Seeley Road
West Harrison, IN 47060

Re: Formal Complaint 07-FC-136; Alleged Violation of the Access to Public Records Act by the Franklin County Area Planning, Zoning and Building Department

Dear Mr. Ritz:

This is in response to your formal complaint alleging that the Franklin County Area Planning, Zoning and Building Department (“Department”) violated the Access to Public Records Act by failing to give you a list of all persons to whom copies of the request for proposals were given.

BACKGROUND

Your complaint states only that you need the consulting firms that were sent a request for proposal from the Franklin County Area Plan Office. According to Mr. Larry Franzman, Executive Director, he sent out 22 proposal letters, and you need the name of all 22 consulting firms. From the documentation you supplied, it appears that you were given a list of names of consulting firms by the Department, but you doubt that the list that was provided to you is the authentic list that is required to be created under Indiana Code 5-22-9-5. From the correspondence with Mr. Franzman, you told him that a “generic consulting firm list, guesswork, or depending on your memory is unacceptable. Please send me the authentic, complete, and accurate list contained in the official area plan files per Indiana law.”

Mr. Franzman supplied the enclosed list that he had already provided to you at the time of your complaint. The heading of the list is “Planning Consultants.” There are twenty-four names on this list. Handwritten at the bottom of the first page of the two page document are the words “This is the List of Firms sent to Bid.” You have written to Mr. Franzman challenging him because Mr. Franzman had reported that 22 proposals had been sent out. Mr. Franzman disputes that there is anything misleading about the list he supplied you. Mr. Franzman stated that there is no list of 22 names in the contract file.

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. Ind. Code 5-14-3-3(a). Generally, a public agency is not required to compile a list of names and addresses, unless the public agency is required to publish such lists and disseminate them to the public under a statute. *See* IC 5-14-3-3(f).

You have asserted that the list you requested is related to a request for proposal, and Mr. Franzman has not disputed the basis for your claim. Under IC 5-22-9-5, a public agency is required to prepare a register of proposals to be open for public inspection after contract award. IC 5-22-9-5(a). The register of proposals must contain, among other things, a list of all persons to whom copies of the request for proposals were given. IC 5-22-9-5(b).

You dispute that the list provided by Mr. Franzman can be the authentic list. First, you state that Mr. Franzman has stated that 22 consulting firms were sent the request for proposal. The list you received contained 24 names. You wrote Mr. Franzman that the list you received was a generic consulting firm list and was inaccurate. Mr. Franzman states that the list he gave you is the only list that is contained within the files of the Department.

There are no formal requirements for certifying the list of names required to be compiled in IC 5-22-9-5. That said, Mr. Franzman states that he found a list in the file that contained 24 names, and this was the only list he found in the file. Whether Mr. Franzman has knowledge that this list was utilized to prepare the mailing list to potential bidders is not at all clear. It is clear that the Department must prepare a list that contains the names of all persons to whom copies of the request for proposals were given. If none was ever prepared, the Department is responsible under the statute to prepare such a list. If Mr. Franzman believes that the proposals were sent to only 22 firms, then this list is inaccurate and does not fully comply with the requirement in IC 5-22-9-5(b).

I recommend that the Department determine what firms were mailed the proposals, and either compile a new list, or using the list you were given, remove the two firms who were not sent the proposal. In the alternative, the Department should assure you that the list is accurate because the Department erred in stating that only 22 firms were sent the proposals because, in fact, the 24 firms on the list received the proposals.

CONCLUSION

For the foregoing reasons, I find that the Franklin County Area Planning, Zoning and Building Department is required to compile and maintain a list of all persons to whom copies of the request for proposals were given, and to provide it to you.

Sincerely,

Karen Davis
Public Access Counselor

cc: Larry Franzman