

August 1, 2007

Bernard Seegers  
16413 North 400 West  
Wheatfield, Indiana 46392

*Re: Formal Complaint 07-FC-195; Alleged Violation of the Access to Public Records Act by the Town of Wheatfield Building Inspector*

Dear Mr. Seegers:

This is in response to your formal complaint alleging the Town of Wheatfield Building Inspector (“Inspector”) violated the Access to Public Records Act (“APRA”) (Ind. Code 5-14-3) by denying your request for records. A copy of the Inspector’s response to your complaint is enclosed for your reference. I find that the Wheatfield Building Inspector did not violate the APRA.

#### BACKGROUND

In your complaint you allege that on June 18, 2007 you submitted a request for access to public records to the Inspector. You specifically requested information related to zoning, building drainage, 100 year flood elevation information, and minutes of the Wheatfield Town Board. You indicate the Inspector refused to accept your request and as of June 30 had not responded to your request. I received your complaint on July 2.

The Inspector responded to your complaint on July 16. The Inspector indicated he had accepted a copy of your request and included it with his response to your request. The Inspector indicated you had phoned him on his cellular telephone on June 20, requesting the records. He indicated you would need to bring your request to the office the following Monday, as his business hours are Monday from 3:30pm to 5:30pm. He indicated you continued to call him asking for the information. On June 25, you were waiting for the Inspector when he arrived to the office. You submitted your written request and indicated you would be back the following day to pick up the documents. The Inspector explained the records would not be available by the next day but would be available for you to collect one week later, on July 2, as the Inspector needed to seek advisement from counsel and have time to prepare copies of the documents. The Inspector did verbally provide one piece of information you requested, the 100 year flood level, because he had the information on hand.

The Inspector indicated you appeared at the office of the Town Clerk on June 26, demanding the same documents from her. She then called the Inspector, who again told you they would be ready on July 2. When the Inspector arrived at his office on July 2, he found a copy of the DNR you had requested on his desk and was told you had left it for him. The Inspector indicated he was ready to provide you with the requested records but you did not appear at the office on July 2. He further indicated your request did not contain any contact information, so he was unable to call you or mail the documents. The Inspector further indicated that on July 13 he spoke to the Town attorney who was able to contact you after receiving a copy of this complaint containing your contact information. The attorney told the Inspector you had agreed to arrange a time to pick up the records on July 16 from the Town Clerk.

### ANALYSIS

The public policy of the APRA states that "(p)roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information." Ind. Code 5-14-3-1. The Inspector is clearly a public agency for the purposes of the APRA. IC 5-14-3-2. Accordingly, any person has the right to inspect and copy the public records of the Inspector during regular business hours unless the public records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. IC 5-14-3-3(a).

A request for records may be oral or written. IC 5-14-3-3(a); 5-14-3-9(c). If the request is made orally, a denial occurs when twenty-four hours have elapsed since the request and the public agency has refused inspection. IC 5-14-3-9(a). It has long been the opinion of the Office of the Public Access Counselor that the twenty-four hours in this provision refers to twenty-four business hours. If the request is made orally, the public agency may deny the request orally. IC 5-14-3-9(c).

Here you requested records related to a particular subdivision in the Town of Wheatfield. Since you submitted your request by writing in person on June 25, the response by the Inspector was required to be completed within twenty-four business hours. The APRA does not require the response to contain a production of records. Instead, the response could be an acknowledgement that the request has been received and information regarding how or when the agency intends to comply.

There are no prescribed timeframes when the records must be produced by a public agency. A public agency is required to 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, section 7 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). The public access counselor has stated that records must be produced within a reasonable period of time, based on the facts and circumstances. The Inspector was required to respond to your request within twenty-four hours and to provide access to any disclosable records within a reasonable period of time. Considering the Inspector works only part time for the Town, one week to collect and prepare for inspection and/or copying the records you requested is reasonable.

While the APRA specifies that a written request must be responded to in writing, it does not require mailing the response when the request was presented in person at the office. Further, you did not provide your mailing address on the request form you submitted, so the Inspector would not know to what address to mail the response. And since you did not provide a phone number, the Inspector could not call you to get your mailing address. Under the APRA, the Inspector was required to prepare the response in writing but did not have to mail it.

#### CONCLUSION

For the foregoing reasons, I find that the Town of Wheatfield Building Inspector did not violate the Access to Public Records Act.

Best regards,

Heather Willis Neal  
Public Access Counselor

cc: Mark Dyke, Town of Wheatfield Building Inspector