

August 20, 2007

Ethel Wheeler
2914 Church Hill Lane
Highland, Indiana 46322

Re: Formal Complaint 07-FC-215; Alleged Violation of the Access to Public Records Act by the Town of Highland Building Department

Dear Ms. Wheeler:

This is in response to your formal complaint alleging the Town of Highland Building Department ("Town") violated the Access to Public Records Act ("APRA") (Ind. Code §5-14-3) by failing to respond to your request for a copy of blueprints of your townhouse. I find that while the Town's response was untimely under the APRA, if the Building Commissioner did ultimately produce the documents, the Town did not otherwise violate the APRA.

BACKGROUND

You allege you have been repeatedly denied access to blueprints of your townhouse by the Town's Building Department. On June 25, you submitted a written request to the Building Commissioner for a copy of the blueprints. You filed your complaint on July 19 after not having received a response.

The Town's response, by Mr. Kenneth Mika, Building Commissioner, was received by this office on July 23. In the response, Mr. Mika indicates the Town did not intend to deny access to records. Mr. Mika explains the Town searched at least twice through ten years of drawings in an attempt to locate the drawings. He indicates he has since located the drawings and as of the date of writing expected to reproduce them for you by July 25.

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." I.C. §5-14-3-1. The Town is clearly a public agency for the purposes of the APRA. I.C. §5-14-3-2. Accordingly, any

person has the right to inspect and copy the public records of the Town during regular business hours unless the public records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. I.C. §5-14-3-3(a).

A request for records may be oral or written. I.C. §5-14-3-3(a); §5-14-3-9(c). If the request is delivered by mail or facsimile and the agency does not respond to the request within seven days of receipt, the request is deemed denied. I.C. §5-14-3-9(b).

A 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. I.C. §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. I.C. §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. Consideration of the nature of the requests (whether they are broad or narrow), how old the records are, and whether the records must be reviewed and edited to delete nondisclosable material are necessary to determine whether the agency has produced records within a reasonable timeframe.

Here, the Town did not respond to your request within seven days of receipt of the written request. It is my understanding the Town has now produced the records you requested. I do not believe approximately one month to be an unreasonable time for production considering the Town had to search through ten years of drawings at least twice to try to locate the particular drawing you requested. But the Town should have responded to your request in writing within seven days of receipt indicating it was looking for the record.

CONCLUSION

For the foregoing reasons, I find that while the Town's response was untimely under the APRA, if the Building Commissioner did ultimately produce the documents, the Town did not otherwise violate the APRA.

Best regards,



Heather Willis Neal
Public Access Counselor

cc: Kenneth Mika, Town of Highland Building Commissioner