

August 30, 2007

Stuart Showalter
PO Box 374
Lebanon, Indiana 46052

Re: Formal Complaint 07-FC-227; Alleged Violation of the Access to Public Records Act by the Town of Thorntown

Dear Mr. Showalter:

This is in response to your formal complaint alleging the Town of Thorntown ("Town") violated the Access to Public Records Act ("APRA") (Ind. Code §5-14-3) by failing to respond to your request for records. A copy of the Town's response is enclosed for your reference.

BACKGROUND

In your complaint you allege that you submitted a request on June 22, 2007 to the Town. You specifically requested any records related to action taken in reference to allegations against a Town police officer. You filed your complaint on July 31 alleging you have not received a response.

The Town responded by letter from attorney Cy Gerde dated August 1. Mr. Gerde indicates you are a party to three different lawsuits with the Town. As a result, Judge Rebecca McClure, Boone County Superior Court 2, has issued a court order instructing you to conduct your discover pursuant to the Indiana Rules of Trial Procedure. Judge McClure issued this order on June 14 and again on July 30, after Mr. Gerde provided her with a copy of your request at issue here.

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. Any person has the right to inspect and copy the public records of a public agency 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).

One of the duties of the public access counselor is to issue advisory opinions to interpret public access laws upon the request of a person or public agency. However, the counselor may not issue an advisory opinion concerning a specific matter with respect to which a lawsuit has been filed under I.C. §5-14-3 or I.C. §5-14-1.5. See I.C. §5-14-4-10(6).

Because you are involved in litigation with the Town by which Judge McClure has made a specific order regarding your access to records created or maintained by the Town, I believe I am precluded from issuing an opinion in this matter.

CONCLUSION

For the foregoing reasons, it is my opinion I.C. §5-14-4-10(6) precluded me from issuing an opinion in this matter.

Best regards,



Heather Willis Neal
Public Access Counselor

cc: Cy Gerde, Town of Thorntown Attorney