

September 28, 2007

Brian Secor
462 Posey Hill Street
Roanoke, Indiana 46783

Re: Formal Complaint 07-FC-259; Alleged Violation of the Access to Public Records Act by the Roanoke Town Council and Clerk-Treasurer

Dear Mr. Secor:

This is in response to your formal complaint alleging the Roanoke Town Council (“Council”) and Roanoke Clerk-Treasurer (“Clerk”), to which collectively I will refer as the “Town” violated the Access to Public Records Act (“APRA”) (Ind. Code §5-14-3) by denying you access to records. A copy of the Clerk’s response is enclosed for your reference. I find that neither the Roanoke Town Council nor the Roanoke Clerk-Treasurer violated the Access to Public Records Act.

BACKGROUND

With your complaint you include a lengthy history of your relationship with the Town. I will attempt here to summarize the facts and to outline what I believe to be the nature of your complaints. You allege you requested on January 1, 2007 copies of all items presented to media and to the Council in what is known as the council packet for each Council meeting of 2007. I understand your complaint to relate to this request in that you believe you did not receive the entire council packet for the July 2 Council meeting. As such you submitted requests on July 17 and July 18 (to correct inaccuracies in your July 17 request) for the records you did not receive. You allege you delivered the July 18 written request to the Clerk on July 19. You then indicate that because you did not receive a response within 24 hours you telephoned John Stoeckley of the Council on July 13. I can only assume this must be a typographical error and that you actually telephoned him on or after July 20.

Michelle Schwieterman of the Council sent you a letter dated July 19 indicating your January 1 request was not made with reasonable particularity because you requested records not yet in existence. The Town was relying on discussions with both Counselor Davis and me regarding this issue. Ms. Schwieterman further indicated the Town would be charging you \$.05 per page for copies based on a 2000 ordinance of the Council.

You further allege that at the conclusion of the August 21 Council meeting you submitted to Mr. Stoeckley a written request for records related to that meeting. You further allege that after that meeting you learned a reporter present at the meeting had been provided copies of the documents you requested at no charge. You submitted your complaint on August 24, and I received it on August 29, alleging you had not yet received a response to your August 21 request.

You further make allegations related to Open Door Law (I.C. §5-14-1.5) issues of the June 19 meeting of the Council. Your complaint regarding that meeting is untimely filed under I.C. §5-14-5-7, and as such I will not be addressing those allegations here.

You submitted additional correspondence to my office dated August 31. In that letter, you indicated the Clerk telephoned you on August 23 to tell you how she would address your complaint. You later learned that the Clerk had requested records from the public library related to your tenure on the Roanoke Public Library Board. You indicate the request appears to be “harassment” and a “somewhat excessive request.”

The Clerk responded to your complaint by letter dated September 6, responding only on behalf of her office and not on behalf of the Council. The Clerk indicated that although she has asked you to do so, you did not provide her, as the custodian of the Council’s records, with your written request of August 21. As such, the request was on her desk with a number of other documents the following day when she was called out of town for a family emergency. She indicated that upon her return to the office, she did provide you the requested records which you collected at that time. The Clerk also indicated her records show the media outlet to which you referred in your complaint has paid for copies of requested records, and her records indicated that amount totaled \$1.05 in August.

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 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 “public record” means any writing, paper, report, study, map, photograph, book, card, tape recording or other material that is created, received, retained, maintained or filed by or with a public agency. I.C. §5-14-3-2.

A request for records may be oral or written, and the agency has the discretion to require the request in writing on or in a form prescribed by the agency. I.C. §5-14-3-3(a); §5-14-3-9(c). A denial of disclosure occurs when the person making the request physically appears in the office and the agency does not respond to the request within 24 hours. I.C. §5-14-3-9(a).

A request for inspection or copying must identify with reasonable particularity the record being requested. I.C. §5-14-3-3(a).

Regarding your July 17/18 request, you indicate you delivered the corrected request to the Clerk's office on the morning of July 19. The Clerk responded by letter from Ms. Schwieterman dated July 19. Since this response was written and sent to you the same day your request was received, this is not a violation of the APRA, which requires a response to a request delivered in person to be completed within 24 hours. I.C. §5-14-3-9(a).

Regarding your August 21 request for records, it is my opinion the Clerk did not violate the APRA by not responding to your request when her office was closed due to a family emergency. It is my understanding the Clerk did respond to your request upon her return to the office. While the APRA sets forth response times for records requests, in an unavoidable situation where public agency's office must be closed due to an emergency, the agency must be allowed to respond to the request on the next business day the office is open.

Regarding your delivery of the request to Mr. Stoeckley at the August 21 Council meeting, it is my suggestion you deliver such requests in the future to the Clerk as the custodian of the records of the Council. I.C. §36-5-6-6. It is my understanding the Clerk and Council have indicated the Clerk is the appropriate public agency to which to address your requests, and I.C. §36-5-6-6 would support that assertion. As I indicated in *Opinion of the Public Access Counselor 07-FC-247*, the APRA specifically addresses requests made in person by physically appearing at the office of the public agency, by telephone, or by mail or facsimile. I.C. §5-14-3-3; §5-14-3-9. The APRA does not address requests made of public officials outside the office. When public officials travel outside their offices to attend meetings, events, and gatherings, they generally speak with numerous individuals. To consider any of those conversations as requests for access to records under the APRA would fall outside the letter of the law and would be quite impractical. *Opinion of the Public Access Counselor 07-FC-247*. I believe the same to be true for written requests delivered in person to a public official away from the office of the agency.

Regarding your blanket request on January 1 for all council packets for the year, I do not believe this to be a request made with reasonable particularity under the APRA. The definition of public records required to be disclosed under the APRA includes any writing, paper, report, study, map, photograph, book, card, tape recording or other material that is created, received, retained, maintained or filed by or with a public agency. I.C. §5-14-3-2. The definition does not include records yet to be created, and as such the Town is under no obligation to produce records that have not been created. If you wish to receive each council packet for the year, you should request each packet after it has been created.

Regarding your allegation the Clerk has charged you for copies of records but has not charged media who have requested copies of records, I do not find a violation of the APRA. A public agency may not charge a fee to search for, examine, or review a record to determine whether the record may be disclosed. I.C. §5-14-3-8(b). The fiscal body, or governing body if there is no fiscal body, of a public agency shall establish a fee schedule for the certification or copying of documents. The fee for copying documents may not exceed the greater of ten cents per page for non-color copies or the actual cost to the agency of copying the document. I.C. §5-

14-3-8(d). A fee established under this section must be uniform throughout the agency and uniform to all purchasers. I.C. §5-14-3-8(d). The Town is well within the APRA in setting forth the fee of \$.05 per page for copies. The Clerk has indicated the local newspaper has been charged for copies. So long as the fee is uniform throughout the agency and is charged uniformly to all purchasers, including the media, I see no APRA violation.

Regarding your allegation the Clerk's request to the public library constitutes "harassment" or a "somewhat excessive request," the APRA provides that any person may inspect and copy the records of a public agency. I.C. §5-14-3-3(a). An agency may not deny the request because the person making the request refuses to state the purpose. I.C. §5-14-3-3(a). The Clerk is well within the APRA in requesting copies of records from the library.

CONCLUSION

For the foregoing reasons, I find that neither the Roanoke Town Council nor the Roanoke Clerk-Treasurer violated the Access to Public Records Act.

Best regards,



Heather Willis Neal
Public Access Counselor

cc: JoAnne Kirchner, Roanoke Clerk-Treasurer
John Stoeckley, Roanoke Town Council
Michelle Schweiterman, Roanoke Town Council