

September 28, 2007

Ian Steele
221 Pokagon
Michiana Shores, Indiana 46360

Re: Formal Complaint 07-FC-260; Alleged Violation of the Access to Public Records Act by the Town of Michiana Shores

Dear Mr. Steele:

This is in response to your formal complaint alleging the Town of Michiana Shores ("Town") violated the Access to Public Records Act ("APRA") (Ind. Code §5-14-3) by denying you access to records. When my office originally received your complaint, we believed you were alleging a recent violation of the APRA. But upon further review, we understand now your complaint involves a request submitted July 11, 2007 to the Town. While this complaint is untimely filed (I.C. §5-14-5-7), I will issue an informal opinion under the authority granted in I.C. §5-14-4-10. You have submitted informal inquiry requests to my predecessor on April 2 and May 11 of this year. Because the matter at issue is similar in all three, I will combine those requests with the current complaint and issue one opinion.

BACKGROUND

You have submitted requests to various Town agencies over the course of the last several years. You have previously filed complaints with this office against the Town. Counselor Davis issued *Opinion of the Public Access Counselor 05-FC-269* on January 30, 2006, addressing your ongoing conflict with the Town regarding access to public records. Rather than reciting the facts an analysis involved there, I am attaching that opinion for your reference.

In your current complaint you allege you submitted a request for access to records to the Town on July 11 and to date have not received a response or production of records. The records you seek can be generally categorized as billing statements, meeting minutes, expenditure reports, invoices and other similar records for this calendar year.

The Town did not respond to your complaint at my invitation to do so.

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. 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).

The facts in your three present complaints and inquiries (dated April 2, May 11 and August 29 of this year) are so similar to those in *Opinion of the Public Access Counselor 05-FC-269*, I do not believe it to be helpful or necessary to set out another lengthy analysis. I agree with the opinion Counselor Davis set out. This appears to me to be an ongoing conflict between the Town and you. You indicate in your recent communication that you will soon submit another complaint for more records you requested between one and three and one half years ago which you never received. And regarding those complaints, I would likely issue the same opinion – that I subscribe to the opinion issued by Counselor Davis in *Opinion of the Public Access Counselor 05-FC-269*, which is essentially that the Town of Michiana Shores has unreasonably delayed production of records responsive to your public records request.

You indicate in your recent complaint that a firm decision must be made to enforce the APRA as it was intended. As Counselor Davis indicated in *Opinion of the Public Access Counselor 05-FC-269*, to pursue such enforcement your recourse is to file a lawsuit in accordance with I.C. §5-14-3-9(e). This office is not granted any enforcement authority under I.C. §5-14-4.

CONCLUSION

For the foregoing reasons, I believe the Town of Michiana Shores has unreasonably delayed production of records responsive to your public records request. To the extent you seek enforcement of the APRA, your recourse is to file action in accordance with I.C. §5-14-3-9(e).

Best regards,



Heather Willis Neal
Public Access Counselor

cc: Steve Millick, Town of Michiana Shores