

October 23, 2007

Dan and Karen Hoagland  
1114 Lake Drive, Clear Lake  
Fremont, Indiana 46737

*Re: Formal Complaint 07-FC-292; Alleged Violation of the Access to Public Records Act by the Town of Clear Lake*

Dear Mr. and Mrs. Hoagland:

This is in response to your formal complaints alleging the Town of Clear Lake ("Town") violated the Access to Public Records Act ("APRA") (Ind. Code §5-14-3) by denying you access to records. Copies of the Town's responses to your complaints are enclosed for your reference. It is my opinion the Town has not violated the APRA.

#### BACKGROUND

You have submitted several complaints to this office against the Town. You have submitted complaints dated September 22, September 26 (2 complaints), and October 16. While the complaints were initially assigned different complaint numbers, they have now all been consolidated into one complaint since they were filed against the same public agency and since the complaints are so similar in nature. This opinion is intended to address all those complaints.

You allege that you have requested a number of records from the Town and have not received a response or copies of any of the requested records. You provide numerous attachments to your complaints and I am unclear exactly why you have submitted many of those documents, but it is my understanding that the nature of your complaint is that you have requested records numerous times and allege that you have not received a response or access to the records from the Town.

The Town responded to your complaint by letters dated October 11 and October 18 from attorney Neal Blythe. Mr. Blythe contends, and provides evidence, that the Town has made several efforts to comply with your requests by offering to schedule times for you to come to the office and inspect and copy records. The Town contends that when these offers are made you often do not follow through with scheduling or appearing to inspect the records. Further, the

Town contends that you were provided access for two full days to inspect any record maintained by the Town, and during those two days you hired a court reporter to be present during your inspection. The Town also provides evidence it has sent to you other records you have requested when you have failed to appear at the office to inspect and/or copy the records you have requested.

## ANALYSIS

The public policy of the APRA states, "(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 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). If the request is made orally or in person and the agency does not respond within 24 hours of receipt, the request is deemed denied. I.C. §5-14-3-9(a).

A response could be an acknowledgement 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.

A request for inspection or copying must identify with reasonable particularity the record being requested and must be at the discretion of the agency in writing on or in a form prescribed by the agency. I.C. §5-14-3-3(a).

Here you have made numerous requests for access to inspect and copy records maintained by the Town. The Town is required to allow you to inspect all records it maintains unless the records are excepted from disclosure under the APRA. I.C. §5-14-3-3(a). The Town has provided evidence it has consistently responded to your requests and has provided many opportunities to allow you to appear at the office and to inspect and copy records maintained by the Town. While it is the duty of the Town to provide you access, it is your responsibility to communicate with the Town when the Town is attempting to accommodate you. I understand you have been to the office for two days when you were provided access to any record you wanted to inspect or copy. Furthermore, I understand the Town has provided you with copies of records when you have not appeared to retrieve records you have requested. I do not find in your several complaints and accompanying documents any violation of the APRA.

## CONCLUSION

For the foregoing reasons, it is my opinion the Town has not violated the APRA.

Best regards,



Heather Willis Neal  
Public Access Counselor

cc: Neal Blythe, Mefford and Weber  
Virginia Nye, Clerk-Treasurer  
Richard Lehman, Town Marshal  
Larry Armstrong, Fire and Police Liaison