

December 5, 2007

David O. Boes
4701 North Keystone Avenue; Suite 222
Indianapolis, Indiana 46205

Re: Formal Complaint 07-FC-344; Alleged Violation of the Access to Public Records Act by the Town of Plainfield

Dear Mr. Boes:

This is in response to your formal complaint alleging the Town of Plainfield ("Town") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by failing to respond to your request for access to records. A copy of the Town's response to your complaint is enclosed. It is my opinion that while the Town's response was untimely under the APRA, the Town has not otherwise violated the APRA.

BACKGROUND

In your complaint you allege that you mailed a request for copies of several records to the Town on October 23, 2007. Hearing no response, you filed this complaint on November 7.

The Town responded to your complaint by letter dated November 26 from Town Manager Richard Carlucci. Mr. Carlucci indicated that upon receipt of your request he began to search for the records but had trouble locating some of them because they had not been requested by anyone else for some time. Mr. Carlucci indicated he intended to provide the records once he located them. Mr. Carlucci was then out of the office for medical reasons and inadvertently failed to respond to your request. Mr. Carlucci has indicated that he has now located the records and provided such to you.

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 “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). Here the Town received the request but did not respond until after receiving a copy of this complaint. The Town was required to respond to your request within seven days of receipt. 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.

It is my understanding the Town has now provided you with information as to how to obtain the records you requested. It is my opinion that while the response was untimely, the Town has not further violated the APRA since he has provided you with the requested information.

CONCLUSION

For the foregoing reasons, it is my opinion that while the Town’s response was untimely under the APRA, the Town has not otherwise violated the APRA.

Best regards,



Heather Willis Neal
Public Access Counselor

cc: Richard Carlucci, Plainfield Town Manager