

December 13, 2007

Allan Katz
PO Box 39
Crown Point, Indiana 46307

Re: Formal Complaint 07-FC-356; Alleged Violation of the Access to Public Records Act by the Crown Point Development Corporation

Dear Mr. Katz:

This advisory opinion is in response to your formal complaints alleging Crown Point Development Corporation (“Corporation”) violated the Access to Public Records Act (“APRA”) (Ind. Code 5-14-3) by denying you access to records. Because of the similar nature of your two complaints, the two have been consolidated and are addressed in this opinion. In my opinion the Corporation violated the Access to Public Records Act.

BACKGROUND

Part I

You are a member of the Board of Directors of the Corporation. I issued an opinion dated August 20, 2007, in which I expressed my opinion that the Corporation is a public agency under the definition set forth in I.C. §5-14-3-2. *Opinion of the Public Access Counselor 07-FC-219*. You allege that you requested records (e.g. a balance sheet or income statement) from the Commission related to a proposed loan from the Corporation to Plasmatronics, Inc. You requested the records so you could review them before voting to extend the loan. You allege the Corporation denied you access to the records. You requested the records by letters dated November 13 and November 20. You mailed your complaint on November 21, and I received it on November 26.

Part II

You allege that by letters dated November 13 and November 20 to Eric Hammond of the Corporation, you requested a copy of the written statement naming Kevin Keough to the Board of Directors of the Corporation. You allege you have received no response to your requests. You mailed the complaint on November 23, and I received it on December 3.

The Corporation did not respond to your complaint at my invitations, dated November 28 and December 3, to do so.

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." 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).

The Corporation is a public agency for the purposes of the APRA. I.C. §5-14-3-2; *Opinion of the Public Access Counselor 07-FC-219*. Accordingly, any person has the right to inspect and copy the public records of the Corporation 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). When the request has been made in writing, a public agency may deny the request if the denial is made in writing and the denial includes a statement of the specific exemption authorizing the withholding of all or part of the public record and the name and title of the person responsible for the denial.

A public agency may deny access to records only for the reasons set forth in I.C. §5-14-3-4. Certain records relating to negotiations between a local economic development organization with industrial, research, or commercial prospects may be withheld at the discretion of the public agency. I.C. §5-14-3-4(b)(5). The public agency bears the burden of proof to sustain the denial. I.C. §5-14-3-9(f).

Here, the Corporation did not respond to your requests. Even if the Corporation could bear the burden of proof to sustain denial under I.C. §5-14-3-4(b)(5), the Corporation is still required to respond to your written request within seven days of receipt of the request. Since the Corporation did not do so, it is my opinion the Corporation has violated the APRA.

CONCLUSION

For the foregoing reasons, it is my opinion the Corporation violated the Access to Public Records Act.

Best regards,



Heather Willis Neal
Public Access Counselor

cc: Eric Hammond, Crown Point Development Corporation