

March 19, 2007

Stuart Showalter  
P.O. Box 374  
Lebanon, IN 46052

*Re: Formal Complaint 07-FC-41; Alleged Violation of the Access to Public Records Act by the Town of Thorntown*

Dear Mr. Showalter:

This is in response to your formal complaint alleging that the Town of Thorntown (“Town”) violated the Access to Public Records Act by ignoring your requests for records. I find that the Town has violated the Access to Public Records Act.

#### BACKGROUND

You sent the Town two requests for records, both dated January 12, 2007. As of the date you filed your complaint, February 12, you allege that the Town has not responded. I sent this formal complaint to the Town attorney, Cy Gerde. I have not received any response to your complaint.

#### ANALYSIS

Any person may inspect and copy the public records of any public agency, except as provided in section 4 of the Access to Public Records Act (“APRA”). Ind. Code 5-14-3-3(a). If a public agency receives a request for a record in person or by telephone, the public agency is required to respond within 24 hours or the record is deemed denied. IC 5-14-3-9(a). If the public agency receives a request for a record via U.S. Mail or facsimile, the public agency is required to respond within seven calendar days, or the request is deemed denied. IC 5-14-3-9(b).

You allege that you have not received any response to your requests for records dated January 12, 2007. The Town has not responded to your complaint, and in not responding, I assume for purposes of this opinion that the unchallenged allegations are true. The Town has

violated the Access to Public Records Act by not responding to your requests within seven days of receiving them. This violation is actionable under Indiana Code 5-14-3-9(e). If you prevail in a lawsuit to compel the Town to disclose the records, you would be entitled to attorney fees, court costs, and reasonable expenses of litigation under IC 5-14-3-9(i) because you received this formal advisory opinion prior to filing a lawsuit.

#### CONCLUSION

For the foregoing reasons, I find that the Town of Thorntown violated the Access to Public Records Act.

Sincerely,

Karen Davis  
Public Access Counselor

cc: Cy Gerde