

February 27, 2007

Cheryl Gridley  
Clerk Treasurer  
Town of Roseland  
137 E. Pendle  
South Bend, IN 46637

*Re: Formal Complaint 07-FC-51; Alleged Violation of the Access to Public Records Act by the Roseland Town Council*

Dear Ms. Gridley:

This is in response to your formal complaint alleging that the Town of Roseland Town Council ("Town Council") violated the Access to Public Records Act.

#### BACKGROUND

I have sent a copy of your complaint to the Town Council.<sup>1</sup> You are the Clerk Treasurer of the Town of Roseland. You allege that you have been denied access to a copy of letters that Teddy Penn, Town Council President, has sent to people telling them that their fines have been forgiven. You also complain that the Town Council has refused to give you a key to the storage area for records. You need access to the storage area to store town files.

#### ANALYSIS

[G]overnment is the servant of the people and not their master. Accordingly, it is the public policy of the state that all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees. Providing persons with the information is an essential function of a representative government and an integral

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<sup>1</sup> When the counselor receives a complaint under IC 5-14-5-7, the counselor shall immediately forward a copy of the complaint to the public agency that is the subject of the complaint. IC 5-14-5-8. The counselor shall issue an advisory opinion on the complaint not later than (30) days after the complaint is filed. IC 5-14-5-9.

part of the routine duties of public officials and employees, whose duty it is to provide the information. This chapter shall be liberally construed to implement this policy and place the burden of proof for the nondisclosure of a public record on the public agency that would deny access to the record and not on the person seeking to inspect and copy the record.

Ind.Code 5-14-3-1.

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). A “public record” is any material that is created, received, retained, maintained, or filed by or with a public agency. IC 5-14-3-2(m). 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).

A public agency may deny a written request for a record if the denial is in writing and the denial includes a statement of the specific exemption or exemptions authorizing the withholding of all or part of the public record, and the name and the title or position of the person responsible for the denial. IC 5-14-3-9(c).

If the Roseland Town Council denied you the public records you seek and the records are not exempt, or the records are exempt from disclosure but the Town Council did not cite the exemption that applies to the records, the Town Council violated the Access to Public Records Act. Any denial would be actionable under IC 5-14-3-9(e).

Sincerely,

Karen Davis  
Public Access Counselor

cc: Jamie C. Woods