

May 10, 2007

Bernard Seegers
16413 N 400 W
Wheatfield, IN 46392

Re: Formal Complaint 07-FC-90; Alleged Violation of the Access to Public Records Act by the Town of DeMotte

Dear Mr. Seegers:

This is in response to your formal complaint alleging that the Town of DeMotte ("Town") violated the Access to Public Records Act by denying you records and charging an excessive fee. I find that the Town violated the Access to Public Records Act.

BACKGROUND

You alleged that you were denied certain records concerning a building permit, occupancy permit, and septic permit, as well as elevation information relating to John Heerma's property. Initially the Town, through its attorney Mr. Earl Walton, wrote you to inform you that your request was denied for the reason that it was not specific enough. Some time after that notification, you wrote again to request the information, setting out the specific property location. Once again Mr. Walton wrote to say that your request was again denied for lack of particularity. This time, Mr. Walton informed you that if you can be more specific as to the date of the records, the Town could assist you.

The records were made available to you on April 2, but Mr. Walton stated that the 8 pages of documents would be delivered to you upon payment of \$18, assessing a \$10 search fee and \$1.00 per page. Your complaint followed.

Mr. Walton submitted the enclosed response to your complaint. He stated that the Town's property records are not arranged by homeowner name. Rather, the records are filed by date. This is why you were denied the records on the earlier occasions. Once you stated that the date could be 1998 or 1999, the Town performed the search and found eight pages of documents

relating to the specific property. It took the secretary one hour and ten minutes to find the records. The old Town records are stored outside the Town Hall.

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. Ind. Code 5-14-3-3(a). A request must identify the record requested with reasonable particularity. IC 5-14-3-3(a)(1). This office has stated that when a request for a record does not identify the record requested with reasonable particularity, the public agency should contact the requester to seek clarification. The public agency should be prepared to explain what additional information would clarify the request.

Here, the Town simply denied your request because it was not reasonably particular. The first communication dated March 28 contained no information concerning how the Town's records were stored. Had the Town told you at the outset that the records were stored by date, not by homeowner name or property location, you may have been able to clarify your request more easily. It is my opinion that the Town's letter of March 28 violated the spirit of the Access to Public Records Act, which states that it is the policy of the state that persons are entitled to full and complete information regarding the affairs of government. IC 5-14-3-1.

Once you were informed of the need to specify a date, you clarified your request and the Town located eight pages of documents. Your complaint also alleges that you were overcharged for the copies. You are correct that the Town assessed a fee that is excessive under the Access to Public Records Act.

First, the Town assessed a \$10 search fee. A public agency may not charge any fee to search for records. IC 5-14-3-8(b)(2). The Town may charge a copy fee. At the time of your request, the law permitted a public agency that is not a state agency to charge a fee under a fee schedule established by the fiscal body; here, the town council. IC 5-14-3-8(d). The fee may not exceed the actual cost of copying the records. IC 5-14-3-8(d). The "actual cost" means the cost of paper and the per-page cost for use of the copying equipment, and does not include labor costs or overhead costs. IC 5-14-3-8(d). The \$1.00 per page copying fee exceeds the actual cost of copying, in my opinion.

CONCLUSION

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

Sincerely,

Karen Davis
Public Access Counselor

cc: Earl D. Walton