

February 12, 2008

Dorothy Snyder  
236 East Pendle Street  
Roseland, Indiana 46637

*Re: Formal Complaint 08-FC-35; Alleged Violation of the Access to Public Records Act by the Roseland Town Council*

Dear Ms. Snyder:

This advisory opinion is in response to your formal complaint alleging the Roseland Town Council ("Council") violated the Access to Public Records Act ("APRA")(Ind. Code 5-14-3) by denying you access to records. A copy of the Council's response to your complaint is enclosed for your reference. It is my opinion the Council did not violate the APRA.

#### BACKGROUND

In your complaint you allege you submitted a request to the Council dated December 21, 2007 for copies of records related to bids received for snow plowing. On December 31 you received a copy of a contract from one company. At the bottom of the record was a handwritten notation that the Council had contacted four companies to seek bids. You filed this complaint on January 14, 2008. It is my understanding you allege additional records must exist relating to the bid process, and you allege those records were not disclosed to you.

The Council responded by letter from dated January 28, 2008 from attorney Michael Lipsky. Mr. Lipsky indicated the Council contacted four firms by telephone asking them to submit bids for snow plowing. Only one of those companies submitted a bid. Mr. Lipsky provides a copy of the December 1, 2007 minutes of the Council, wherein there is an indication that only one company submitted a bid.

#### 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 Council 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 Council 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).

Nothing in the APRA requires a public agency to *develop* records or information pursuant to a request. The APRA requires the public agency to *provide access* to records already created.

You have requested records related to the bid process for snow plowing. The Council has provided you with a copy of the one bid it received. While I understand you believe there should be additional records, the Council has affirmed this bid is the only bid received, and no additional records responsive to your request exist. As such, it is my opinion the Council has complied with the production requirements of the APRA.

#### CONCLUSION

For the foregoing reasons, it is my opinion the Roseland Town Council did not violate the Access to Public Records Act.

Best regards,



Heather Willis Neal  
Public Access Counselor

cc: Michael Lipsky, Attorney for the Roseland Town Council