



STATE OF INDIANA

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July 6, 2010

Mr. James E. Snyder
13111 Johnson Road
Churubusco, IN 46723

Re: Formal Complaint 10-FC-140; Alleged Violation of the Access to Public Records Act by the Huntertown Town Council

Dear Mr. Snyder:

This advisory opinion is in response to your formal complaint alleging the Huntertown Town Council (the "Town") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* The Town's response to your complaint is enclosed.

BACKGROUND

In your complaint, you allege that the Town informed you that it is "unable to give us access to all the information we have requested." You claim that the Town has not responded to your requests in a timely manner because the Town has not produced the requested information within seven (7) days.

In response to your complaint, Jim Fortman, president of the Town's council, states that the Town did not produce some of the information because it is not maintained by the Town but by either the Town's engineer or the Town's attorney. Mr. Fortman claims that the Town responded to your initial May 20, 2010, request and offered to meet with you to discuss the public access process on May 28th, but you declined the invitation. As a result, Huntertown responded to your request in writing on June 1, 2010. Mr. Fortman further states that the Town is willing to provide you with records that are maintained by the Town, but that the Town is not obligated to respond to requests directed to private entities (i.e., the Town's attorney and engineer). Finally, Mr. Fortman claims that the Town has "provided or made available for copying all the requested documents which are in its possession in a timely way...."

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 Clerk does not dispute that it is 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 Clerk’s public records during regular business hours unless the records are excepted from disclosure as confidential or 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 (7) days of receipt, the request is deemed denied. I.C. §5-14-3-9(b). If the request is delivered in person and the agency does not respond within 24 hours, the request is deemed denied. I.C. §5-14-3-9(a). The APRA does not require public agencies to *produce* records within seven (7) days; rather, it requires a *response*. A response from the public agency could be an acknowledgement that the request has been received and information regarding how or when the agency intends to comply. Here, if the Town responded within seven (7) days to your May 20th request, the Town did not violate the APRA.

Under the ARRA, a request for inspection or copying must identify with reasonable particularity the record being requested. I.C. § 5-14-3-3(a). While the term “reasonable particularity” is not defined in the APRA, it has been addressed a number of times by the public access counselor. *See Opinions of the Public Access Counselor 99-FC-21 and 00-FC-15* for two examples. Counselor Hurst addressed this issue in *Opinion of the Public Access Counselor 04-FC-38*:

A request for public records must “identify with reasonable particularity the record being requested.” IC 5-14-3-3(a)(1). While a request for *information* may in many circumstances meet this requirement, when the public agency does not organize or maintain its records in a manner that permits it to readily identify records that are responsive to the request, it is under no obligation to search all of its records for any reference to the information being requested. Moreover, unless otherwise required by law, a public agency is under no obligation to maintain its records in any particular manner, and it is under no obligation to *create* a record that complies with the requesting party’s request.

Opinion of the Public Access Counselor 04-FC-38 (2004), available at <http://www.in.gov/pac/advisory/files/04-FC-38.pdf>. In reviewing your request, it appears that other portions of your request seek general *information* rather than *records*. Public agencies are not obligated to create records in response to a request, and they are also not obligated to answer generalized inquiries. If a public agency has no records responsive to a public records request, the agency does not violate the APRA by denying the request. “[T]he APRA governs access to the public records of a public agency that exist; the

failure to produce public records that do not exist or are not maintained by the public agency is not a denial under the APRA.”

To the extent that you have requested specific records from the Town and the Town refuses to release the records, the Town should cite a basis for withholding those records (provided you submit your request in writing). The APRA requires that when a request is made in writing and an agency denies the request, the agency’s denial must be in writing and must include a statement of the specific exemption or exemptions authorizing the withholding of all or part of the record and the name and title or position of the person responsible for the denial. I.C. § 5-14-3-9(c).

Finally, with regard to any requests sent directly to the Town’s engineer or attorney, I agree that those would not be valid requests under the APRA. The APRA applies to public agencies, and previous public access counselors have even opined that requests sent to a public official’s home address (rather than a business address) are not valid requests under the APRA. *See, e.g., Opinion of the Public Access Counselor 08-FC-73.*

CONCLUSION

For the foregoing reasons, it is my opinion that if the Town responded to your written request within seven (7) days, the Town has not violated the APRA.

Best regards,



Andrew J. Kossack
Public Access Counselor

Cc: Jim Fortman