



# STATE OF INDIANA

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December 13, 2010

Mr. Hugh P. Burns  
8128 Hurricane St.  
Elizabeth, IN 47117

*Re: Formal Complaint 10-FC-296; Alleged Violation of the Access to Public Records Act by the Town of Elizabeth*

Dear Mr. Burns:

This advisory opinion is in response to your formal complaint alleging the Town of Elizabeth ("Town") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* I granted your request for priority status under 62 Ind. Admin. Code 1-1-3(3).

## BACKGROUND

In your complaint, you allege that you mailed a records request to the Clerk-Treasurer for the Town of Elizabeth ("Clerk-Treasurer") on November 16, 2010. You also sent a copy to the Clerk-Treasurer via inter-office mail. You claim that the letter was on the Clerk-Treasurer's desk on November 17th. You also mailed a request to the Clerk-Treasurer's home address on November 16th. As of November 22nd, you had not received a response. Your request sought access to financial reports for the Town.

My office forwarded a copy of your complaint to the Town. As of today, we have not received a response.

## 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 Town is a public agency for purposes of the APRA. I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy the Town's public records during regular business hours unless the 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 (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). 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, it is unclear whether or not the Clerk-Treasurer responded within seven days of receiving the request<sup>1</sup> because you filed your complaint on November 22nd, which is only five days after you allege that it appeared on the Clerk-Treasurer's desk and six days after you mailed it and submitted it through inter-office mail. If the Clerk-Treasurer failed to respond to the request within seven days of receiving it, the request is deemed denied under the APRA.

Assuming for the purposes of this opinion that the Clerk-Treasurer ultimately denied your request, I do not have sufficient information to determine whether or not the substance of that denial violated the APRA. Under the APRA, a public agency that withholds a public record bears the burden of showing that the record is exempt. I.C. §§ 5-14-3-1, 5-14-3-9(f) and (g). Exceptions to disclosure are narrowly construed. I.C. § 5-14-3-1. Because the Town has not provided a justification for withholding the records at issue here, it is my opinion that the Town has failed to carry that burden.

If the Town cannot justify withholding the records under the APRA, I encourage it to release the records to you as soon as possible. To the extent the Town persists in denying access following the issuance of an advisory opinion from this office and you believe it is in violation of the APRA, I leave you to your remedies before a court pursuant to Ind. Code § 5-14-3-9(e).

## CONCLUSION

For the foregoing reasons, it is my opinion that the Town has not sustained its burden of proof to demonstrate that it had a legal basis to withhold the records you requested.

Best regards,



Andrew J. Kossack  
Public Access Counselor

cc: Adrian Hall

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<sup>1</sup> I note that records requests submitted to a public employee or official's home address are not valid requests unless the individual uses his or her home as the business address of the public agency subject to the request. See *Op. of the Public Access Counselor 09-FC-233*.