



STATE OF INDIANA

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January 20, 2011

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

Re: Formal Complaint 10-FC-322; 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 (the "Town") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* My office forwarded a copy of your complaint to the Town, but as of today we have not received a response.

BACKGROUND

In your complaint, you allege that you delivered a records request to the Town clerk-treasurer's mailbox on December 13, 2010. As of December 21, 2010, you had received no response to your request.

ANALYSIS

The public policy of the APRA states, "[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 does not contest that it is a "public agency" under 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 public records are excepted from disclosure as 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. The Town should have responded to your hand-delivered request within 24 hours (i.e., on December 2nd). Because the Town failed to do so, your request was denied as a matter of law. *Id.* Under the APRA, when a request is made in writing and the agency denies the request, the agency must deny the request 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). Consequently, the Town's failure to deny your request in accordance with subsection 9(c) violated the APRA.

Without the benefit of a response from the Town, it is unclear to me why your request was denied. Under the APRA, a public agency that withholds a public record bears the burden of proof to show 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 sustain its burden.

If the Town cannot justify withholding the records under the APRA, I encourage the Town to release the records to you as soon as possible. To the extent the Town persists in its denial of access following the issuance of an advisory opinion from this office and you believe the Town to be 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 to show that it produced your requested records within a reasonable amount of time. I trust the Town will release all responsive records to you as soon as possible. To the extent an agency persists in its denial of access following the issuance of an advisory opinion from this office, I leave you to your remedies before a court pursuant to Ind. Code § 5-14-3-9(e).

Best regards,



Andrew J. Kossack
Public Access Counselor

Cc: Adrian Hall