



STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

PUBLIC ACCESS COUNSELOR
JOSEPH B. HOAGE

Indiana Government Center South
402 West Washington Street, Room W470
Indianapolis, Indiana 46204-2745
Telephone: (317)233-9435
Fax: (317)233-3091
1-800-228-6013
www.IN.gov/pac

May 21, 2012

Christine Anderson
4998 Riverview Drive
Indianapolis, Indiana 46208

Re: Formal Complaint 12-FC-103; Alleged Violation of the Access to Public Records Act by the Rocky Ripple Town Board

Dear Ms. Anderson:

This advisory opinion is in response to your formal complaint alleging the Rocky Ripple Town Board ("Board") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Our office forwarded a copy of your formal complaint to the Board. As of today's date, we have yet to receive a response.

BACKGROUND

In your formal complaint, you allege that you submitted a written request for records to the Board on March 23, 2012. In response to your request, you were advised in writing that you would need to submit your request directly to the Board's attorney. You believe that the request that was submitted complied with the requirements of the APRA and that the Board improperly denied your request by requiring you to submit the request directly to the Board's attorney.

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." *See* I.C. § 5-14-3-1. The Board is a public agency for the purposes of the APRA. *See* I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy the Board's public records during regular business hours unless the records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. *See* I.C. § 5-14-3-3(a).

A request for records may be oral or written. *See* I.C. § 5-14-3-3(a); § 5-14-3-9(c). If the request is delivered in person and the agency does not respond within twenty-four hours, the request is deemed denied. *See* I.C. § 5-14-3-9(a). 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. *See* I.C. § 5-14-3-9(b). 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 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. *See* I.C. § 5-14-3-9(c). 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, you provided that in response to your written request for records, you were directed to submit your request directly to the Board's attorney, who would then decide what records would be disclosed.

Without the benefit of a response from the Board, it is unclear to me if or why your request was denied. An employee of an agency may not deny a request simply because it is not within their personal duties to respond, but must forward the request to the appropriate person so that a response may be issued. *See Opinion of the Public Access Counselor 05-FC-114*. Although the Board may choose to have its attorney respond to a request for records, it is ultimately the Board's responsibility to ensure that the requirements of the APRA are complied with. Under the APRA, a public agency that withholds a public record bears the burden of proof to show that the record is exempt. *See* I.C. §§ 5-14-3-1, 5-14-3-9(f), (g). Exceptions to disclosure are narrowly construed. *See* I.C. § 5-14-3-1. Because the Board has not provided a justification for withholding the records at issue here, it is my opinion that the Board has failed to sustain its burden.

If the Board cannot justify withholding the records under the APRA, I encourage the Board to release the records to you as soon as possible. To the extent the Board persists in its denial of access following the issuance of an advisory opinion from this office and you believe the Board 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 Board violated the APRA.

Best regards,

A handwritten signature in black ink, appearing to read "J. Hoage". The signature is fluid and cursive, with the first letter of the first name being a large, stylized capital 'J'.

Joseph B. Hoage
Public Access Counselor

cc: Rocky Ripple Town Board