



STATE OF INDIANA

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December 9, 2013

Mr. Leonard Rowe
1609 Woodside Dr.
Danville, IN 46122

Re: Formal Complaint 13-FC-321; Alleged Violation of the Access to Public Records Act by the Hendricks County Engineer and the Danville Town Manager¹

Dear Mr. Rowe,

This advisory opinion is in response to your formal complaint alleging the Hendricks County Engineer and the Danville Town Manager (“Agencies”) violated the Access to Public Records Act (“APRA”), Ind. Code § 5-14-3-1 *et. seq.*, Mr. Gary D. Eakin and Mr. Gregory F. Steuerwald responded to your formal complaint. Their responses are enclosed for your review. Pursuant to Ind. Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on November 1, 2013. Please note your request for priority status has been denied, as it does not meet the requirements of 62 IAC 1-1-3.

BACKGROUND

Your complaint dated November 1, 2013 alleges the Hendricks County Engineer and the Danville Town Manager violated the Access to Public Records Act by denying your request for records in violation of Ind. Code § 5-14-3-3(b).

On or about October 21, 2013, you served upon both entities a request for public records regarding the mowing of vegetation between your property and the Hendricks County Fairgrounds. Specifically, your request includes several forms of communication between County and City staff members regarding mowing ordinances.

On October 23, 2013, the County Engineer, Mr. John Ayers, acknowledged your request but stated he was unable to produce any records responsive to your request. He did concede he had a conversation with another staff member regarding the vegetation.

¹ Because your public records request to the two agencies were identical (as were the responses), I have consolidated your two formal complaints.

Similarly, Mr. Gary Eakin, Danville Town Manager, informed you on October 21, 2013 the town also did not have any records responsive to your request.

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 Ind. Code § 5-14-3-1. The Hendricks County Engineer and the Danville Town Manager’s Offices are public agencies for the purposes of the APRA. See Ind. Code § 5-14-3-2(n)(1). Accordingly, any person has the right to inspect and copy the Agencies’ public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. See Ind. Code § 5-14- 3-3(a).

A request for records may be oral or written. See Ind. Code § 5-14-3-3(a); § 5-14-3-9(c). If the request is delivered in person and the agency does not respond within 24 hours, the request is deemed denied. See Ind. Code § 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 (7) days of receipt, the request is deemed denied. See Ind. Code § 5-14-3-9(b). A response from the public agency could be an acknowledgement the request has been received and information regarding how or when the agency intends to comply.

The issue in your complaint appears to be the inclusion of several email responses which may or may not allude to other conversations taking place between Town and County executives referencing the vegetation strip near your home. As indicated in the County’s response, they do not keep telephone logs of conversation. Unless a state statute or county ordinance requires them to do so, they are not obligated to create a log in order to be responsive to your records request.

Additionally, the Agencies indicate they have no written record of any correspondence between the Town and the Board regarding the responsibility of mowing the vegetation. The County argues the Fair Board of Directors maintains those grounds and not the Agencies to whom you directed your request. You may have better success soliciting input from the Fair Board.

Finally, the County Engineer indicates in an October 21, 2013 email that he doesn’t “have time to track down all that info he is requesting right now.” If records you have requested exist, then you are entitled to those records. It may be of a deliberative or opinion-based nature, but the County has not asserted as such. If the comment was merely off-hand and there is no additional information, then a violation cannot be definitively determined.

CONCLUSION

For the foregoing reasons, it is the Opinion of the Public Access Counselor that the Hendricks County Engineer and the Danville Town Manager did not violate the Access to Public Records Act if they do not have records responsive to your request.

Regards,

A handwritten signature in black ink, appearing to read 'LHB', with a long, sweeping underline that extends to the left and then curves back under the initials.

Luke H. Britt
Public Access Counselor

Cc: Mr. Gary D. Eakin; Mr. Gregory F. Steuerwald