



# STATE OF INDIANA

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May 24, 2016

Mr. William J. Fehribach, Jr.  
104 North Ferguson Street  
Henryville, Indiana 47126

*Re: Formal Complaint 16-FC-92; Alleged Violation of the Access to Public Records Act by the Clark County Planning and Zoning Office*

Dear Mr. Fehribach:

This advisory opinion is in response to your formal complaint alleging the Clark County Planning and Zoning Office ("Office") and Mr. Michael Tackett violated the Access to Public Records Act ("APRA"), Indiana Code § 5-14-3-1 et. seq. The Office has responded via Mr. David Nachand, Esq. His response is enclosed for your review. Pursuant to Indiana Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on April 11, 2016.

## **BACKGROUND**

Your complaint dated April 21, 2016 alleges the Clark County Planning and Zoning Office and Mr. Michael Tackett violated the Access to Public Records Act by not responding to your records request.

On March 23, 2016 you submitted a records request seeking "Any and all" drainage permits, building permits and deed restrictions for key # 06-31-102. You also sought assorted zoning records for the key.

On May 4, 2016 the Office responded. The Office notes Mr. Tackett acknowledged your request orally and in writing again on May 2, 2016. The Office asserts you were informed the Office would provide you any records responsive which it has not previously provided you.

## **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 Indiana Code § 5-14-3-1*. The Clark County Planning and Zoning Office is a public agency for the purposes of the APRA. *See Indiana Code § 5-14-3-2(n)(1)*. Accordingly, any person has the right to inspect and copy the Office's disclosable

public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. *See Indiana Code § 5-14-3-3(a)*.

A request for records may be oral or written. *See Indiana Code § 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. *See Indiana 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 Office states your request was verbally acknowledged at the time of the request. My suggestion to public agencies is that an acknowledgement always be in writing, whether it is an oral or written request. This creates a paper trail of compliance and avoids confusion. It is not required under the law but best practice. I encourage the agency to implement this policy going forward.

This Office is not a finder of fact and cannot determine whether the alleged communication actually took place. If indeed it did, the Office has fulfilled its duty to acknowledge your request. In a subsequent follow-up on May 2, 2016, you were informed several of the documents you seek were not in the custody of the Planning and Zoning Office. Several more were enclosed with the follow-up letter. You have not indicated you take exception with the follow-up letter -only the timing and form of the acknowledgement. From the information provided, however, the Office appears to be in compliance.

### CONCLUSION

Based on the forgoing, it is the Opinion of the Public Access Counselor the Clark County Planning and Zoning Office has not violated the Access to Public Records Act.

Regards,

A handwritten signature in black ink, appearing to read 'L. Britt', with a large, sweeping flourish underneath.

Luke H. Britt  
Public Access Counselor

Cc: Mr. David Nachand, Esq.