

November 22, 2000

Mr. Richard Volbrecht
9221 Parkway Drive
Highland, Indiana 46322

Re: Advisory Opinion 00-FC-38 *Alleged Denial of Access to Public Records by the Town Council of Highland.*

Dear Mr. Volbrecht:

This is in response to your formal complaint, which was received on October 27, 2000. You have alleged that the Town Council of Highland ("Town Council,") has violated the Indiana Access to Public Records Act ("APRA,") Indiana Code chapter 5-14-3. Specifically, you allege that the Town Council members failed to respond to your October 26, 2000 hand-delivered requests for access to public records in a timely manner. According to your complaint, you purposefully made requests to individual members of the Council, and not to the Town Council as a whole. Mr. Rhett L. Tauber, attorney for the Department responded in writing to your complaint in a letter dated November 8, 2000. A copy of his response is enclosed for your reference.

For the reasons stated below, it is my opinion that the APRA applies to public agencies, not individuals. To the extent that you made a request to a public agency under the facts presented, it is my opinion that you were not denied access, in fact, you received a timely response from the Clerk-Treasurer's Office under Indiana Code section 5-14-3-9(a).

BACKGROUND

According to information provided in your complaint, you hand-delivered written, individual requests to the members of the Town Council at the Town Hall on October 26, 2000 at approximately 9:30 a.m. In these requests, you asked for any individual records that showed the results of votes taken by the Town Council and any documents from their meetings concerning an investigation of the town police department. You indicate that you personally explained to the receptionist at the Town Hall that the councilors had only twenty-four (24) hours to respond to your requests and asked her to contact the councilors about your requests. You assumed that two of the councilors, who are town police officers, would receive your requests because they also work in the Town Hall. You also delivered copies to the homes of each of the other three councilors and provided great detail in your complaint about how this was accomplished.

In response to your complaint, Mr. Tauber stated that your requests were received in the Town Hall on October 26th, with a note that they were received by the Town Clerk-Treasurer's Office at approximately 10 am that day. Mr. Georgeff first saw your request when he went to the Town Hall on October 28th, the Saturday following the delivery of your request, and he took it to the Council's study session held that day at the Lake County Convention and Tourism Bureau Office in Hammond. At that study session, the Town Council discussed your requests and determined that none of them had any documents responsive to your request. Later that same day, a response on behalf of all of the councilors was faxed to you. With respect to your deliveries to the three councilors' homes, one member did receive the request, another threw it away believing it to be general information and the third was unaware of your request until the study session. You filed your formal complaint with this Office at approximately 3:30 p.m. on October 27th alleging you had not received any responses to the individual requests that you made to the five Town Council members.

After receiving your complaint, I spoke to Town Clerk-Treasurer Michael Griffin by telephone. Mr. Griffin told me that he called you within the twenty-four (24) hour period after receiving your request and advised you that he would personally comply with the request you addressed to him as the record keeper for the Town Council. In addition, Mr. Griffin told you that he would ensure that the identical requests to the town councilors would be placed in their mailboxes, but that he was unsure when the councilors would actually receive your requests.

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." Ind. Code § 5-14-3-1. The Town Council is a public agency for the purposes of the APRA. Ind. Code § 5-14-3-2. Accordingly, any person has the right to inspect and copy the public records of the Town Council during their regular business hours. Ind. Code § 5-14-3-3(a).

You were very clear in your complaint that you hand-delivered requests to each council member so that you could determine what each councilor might have concerning their action or inaction concerning the town police department. The APRA requires public agencies to respond to requests to inspect and copy public records. Public agency, for the purposes of the APRA, is defined as

any county, township, school corporation, city, or town, or any board, commission, department, division, bureau, committee, office, instrumentality, or authority of any county, township, school corporation, city, or town; or other entity, or any office thereof, by whatever name designated, exercising in a limited geographical area the executive, administrative, judicial, or legislative power of the state or a delegated local governmental power.

Indiana Code §5-14-3-2. Each individual member of the Town Council, therefore, does not constitute a public agency for the purposes of the APRA. Clerk-Treasurer Griffin is the keeper of the records for the

Town Council under Indiana Code section 36-5-6-6(a)(7).

A public record is defined as

any writing, paper, report, study, map, photograph, book, card, tape recording, or other material that is created, received, retained, maintained, used, or filed by or with a public agency and which is generated on paper, paper substitutes, photographic media, chemically based media, magnetic or machine readable media, electronically stored data, or any other material, regardless of form or characteristics.

Indiana Code § 5-14-3-2. (Emphasis added.) Public records, therefore, include information held by a public agency, not individual members of the governing body of that public agency.

It is the responsibility of the public agency to respond to requests for public records within a specified time period. The APRA does not set any time periods for producing public records, merely for responding to the request. See, Ind. Code §5-14-3-9. While the response required under the APRA is not specifically described, what is certainly contemplated is a communication to the requestor. For example, a public agency may respond that the request has been received, whether there are any records that will be produced, that the records requested are confidential or otherwise nondisclosable, or that the public agency needs more time to compile the records requested. A response may also provide the records requested, or notify the requestor that the public records requested are available for his or her inspection.

A denial of access, with respect to a hand-delivered written request, occurs when:

the person making the request is physically present in the office of the agency, makes the request by telephone, or requests enhanced access to a document and: (1) the person designated by the public agency as being responsible for public records release decisions refuses to permit inspection and copying of a public record when a request has been made; or (2) twenty-four (24) hours elapse after any employee of the public agency refuses to permit inspection and copying of a public record when a request has been made; whichever occurs first.

Indiana Code section 5-14-3-9(a). Again, the response or failure to respond under this provision is directed at a public agency, not individual public officials. Once a denial has occurred, a person may file suit in the circuit or superior court in which the denial took place to compel the public agency to disclose the public records requested. Ind. Code §5-14-3-9(d).

According to the facts presented, it is my opinion that your request to a public agency was delivered to Mr. Griffin, who serves as the record keeper for the Town Council. Clerk-Treasurer Griffin did respond and attempted to communicate to you that he was responding on behalf of the Town Council.

I understand your concern and realize your intent was to get whatever records each member of the Town Council may have had concerning their meetings and alleged investigation of the Town Police

Department. Accordingly, the Town Council reviewed your individual requests in their study session held on October 28th and did respond in a joint fax, signed by each individual member indicating that they had no records other than the minutes and memoranda of the meetings you cited in your requests.

I realize that you have been frustrated in your efforts to obtain public records from the Town of Highland over the past several months, but I am also concerned that your expectations in this case may have been unrealistic. You filed your formal complaint with this Office on October 27, 2000, a matter of hours after you thought that the twenty-four (24) hours passed from your deliveries to the individual members. You placed these Town Councilors in a difficult position-holding them to a standard for response that is designed for public agencies, not individuals who serve in a part-time capacity. The Town Council is to be commended for its' quick action on October 28th to respond to your individual requests on the same day that most of the members learned of your request. Please understand that I do not condone the actions of Town Council members who physically received a copy and did not respond, but I do believe that the APRA was designed for requests made to public agencies, not to individuals.

CONCLUSION

It is my opinion that the APRA applies to public agencies, not individuals. To the extent that you made a request to a public agency under the facts presented, it is my opinion that you were not denied access, in fact, you received a timely response from the Clerk-Treasurer's Office under Indiana Code section 5-14-3-9(a).

Sincerely,

Anne Mullin O'Connor

Enclosure

cc: Mr. Rhett Tauber, Attorney
Town of Highland
