

July 16, 2002

Ms. LaVada G. Davis  
6870 Deatruck Road, SE  
Elizabeth, IN 47117

Re: *Advisory Opinion 02-FC-25*;

Alleged Failure to Respond in a Timely Manner under the Access to Public Records Act by the Town of Elizabeth.

Dear Ms. Davis:

This is in response to your formal complaint, which was received on June 25, 2002. You have alleged that the Town of Elizabeth, and in particular Clerk-Treasurer Hugh Burns ("Clerk-Treasurer") violated the Indiana Access to Public Records Act, ("APRA,") Indiana Code chapter 5-14-3. Specifically, you claim that when you make requests for access to public records, Mr. Burns does not respond in a timely manner under Indiana Code section 5-14-3-9. Mr. Burns responded in writing to your complaint and a copy of his response is enclosed for your reference.

For the reasons set forth below, it is my opinion that Mr. Burns did respond in a timely manner under the APRA with respect to your request for copies of Town Council meeting minutes. However, Mr. Burns failed to respond to your request for a copy of his bond within that same time period, this did violate the APRA and is actionable in court under the statute.

### BACKGROUND

According to your complaint<sup>1</sup>, on June 17, 2002, you hand-delivered a written request to Mr. Burns for a copy of the Town of Elizabeth Board meeting minutes for March and April of 2002. You also requested a copy of the valid bond for the town clerk-treasurer that expires in the year 2005, which was mentioned at the May Board meeting. You requested that Mr. Burns telephone you when the copies were ready. In a letter dated June 18th, but not received by you until June 20, 2002, Mr. Burns replied that he received your request for copies of the meeting minutes and that they would be mailed no later than seven (7) days from the date of his response. Mr. Burns did not address your request for a copy of his bond in that response. After receiving his response, you filed your formal complaint with this Office.

In response to your complaint, Mr. Burns stated that he has responded to all of your public records requests in a timely manner under the APRA, including your request of June 17th and that he will continue to do so. Mr. Burns did not, however, address your June 17th request for a copy of his bond, which he had mentioned at the May meeting of the Town Council. Mr. Burns advised me by telephone on July 15, 2002 that on at least two (2) occasions (once before your June 17th request and the second time after your request) he had provided copies of his current and only outstanding bond to you. He did,

however, acknowledge that he had failed to address this in his written response of June 18th.

## 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. Furthermore, "[t]his chapter shall be liberally construed to implement this policy and place the burden of proof for the nondisclosure of a public record on the public agency that would deny access to the record and not on the person seeking to inspect and copy the record." Ind. Code § 5-14-3-1.

The Clerk-Treasurer's Office is clearly 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 Clerk-Treasurer's Office during regular business hours unless the public records are excepted from disclosure as confidential or otherwise nondisclosable under Indiana Code section 5-14-3-4. Ind. Code § 5-14-3-3 (a).

It is the responsibility of the public agency to respond to requests for access to 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. For requests that are delivered by hand, a denial is deemed to have occurred if twenty-four (24) hours elapse after the agency receives the request and there has been no response. Ind. Code §5-14-3-9(a). Once a denial has occurred under the APRA, 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 your complaint, you hand-delivered your June 17th request to Mr. Burns and did not receive a response to your request until June 20, 2002. Mr. Burns' response, however, was dated June 18th, which was within twenty-four (24) hours of your request. It was delivered, however, by U.S. Mail, so this delayed your receipt of the response. There is nothing in the APRA that prohibits a public agency from mailing a response to a public records request, however, it does delay when a requestor may receive that response.

As for the substance of his response, Mr. Burns did address your request for copies of meeting minutes but did not respond in any fashion concerning your request for a copy of his bond, which was referenced at the May Town Council meeting. Mr. Burns verbally advised me that he has already provided the copy of the bond to you on two (2) occasions, so he did not respond on that issue. Under the APRA, however, the response contemplated under Indiana Code section 5-14-3-9(a) and (b) is to the entire request, not just a portion. Mr. Burns should have responded directly to your request for a copy of his current bond, even if to state that you had received a copy at some earlier time, in his June 18th written response. There is nothing in writing to confirm that you had in fact received a copy of this bond in the materials provided to me by Mr. Burns, but even if you had, you were entitled to a response to your request within the time period contemplated under the APRA.

For these reasons, it is my opinion that under the APRA, Mr. Burns did respond in a timely manner by mailing a response to you within the twenty-four (24) hours required under Indiana Code section 5-14-3-9(a) concerning your request for copies of meeting minutes. It is also my opinion that Mr. Burns' failure to respond to your request for a copy of his current bond constituted a denial of access under the APRA as he was required to respond to this request within twenty-four (24) hours after he received it. This denial is actionable under Indiana Code section 5-14-3-9.

## CONCLUSION

It is my opinion that Town of Elizabeth Clerk-Treasurer did respond in a timely manner as to your request for copies of the meeting minutes of the Town of Elizabeth Council under Indiana Code section 5-14-3-9(a). The failure to respond to your request for a copy of his bond, however, did violate the APRA and is actionable in court under Indiana Code section 5-14-3-9(d).

Sincerely,

Anne Mullin O'Connor

Enclosure

cc: Mr. Hugh Burns, Clerk-Treasurer  
Town of Elizabeth

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<sup>1</sup> You also referenced requests from earlier this year, but the alleged denials occurred more than thirty (30) days prior to your formal complaint. See, IC 5-14-5-7(a). I did invite Mr. Burns, in responding to your complaint, to address the other issues raised in your complaint and he did so. See, Mr. Burns' response