

March 7, 2003

Ms. Dorothy M. Paul
217 Murray Street
Roseland, IN 46637

Re: *Advisory Opinion 03-FC-7*; Alleged Denial of Access to Public Records by the Town of Roseland Clerk-Treasurer.

Dear Ms. Paul:

This is written in response to your formal complaint, which was received on February 19, 2003.

¹ You have alleged that the Town of Roseland Clerk-Treasurer ("Clerk-Treasurer") violated the Indiana Access to Public Records Act ("APRA,") Indiana Code chapter 5-14-3. Specifically, you allege that on January 20, February 7 and 19, 2003 you requested copies of dockets, otherwise known as the Accounts Payable Voucher Register, from the Clerk-Treasurer and that you were denied access to them. Ms. Renee Gatchell, Clerk-Treasurer, responded in writing to your complaint. A copy of her response and the attachments are enclosed for your reference. For the reasons set forth below, it is my opinion that the Clerk-Treasurer has not denied you access to public records in violation of the APRA.

BACKGROUND

According to your complaint, ² on January 20th, February 7th and February 19th you made written requests to the Clerk-Treasurer for copies of various dockets for the Town of Roseland and these copies were never provided to you. In addition you allege that with respect to the February 19th request, the Clerk-Treasurer verbally denied your request and that the town marshal was present as a witness to this denial. You then filed your formal complaint with this Office.

In her response, Ms. Gatchell stated that copies of the dockets are presented to the Town Council, of which you are a member, at their regular monthly meetings for approval. Copies of the dockets also hang outside the Clerk-Treasurer's Office for review by anyone interested, but due to the large size, she is not able to make copies of it on the office copier. Ms. Gatchell also provided a statement from the town marshal indicating that he did not recall hearing her refuse you access to the requested records on February 19th.

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 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). The burden for any nondisclosure generally lies with the public agency, not the person making the request under the APRA. Ind. Code §5-14-3-1.

It is the responsibility of the public agency to respond to requests for access to public records within a specified time period. See, Ind. Code §§5-14-3-9(a) and (b). Once a denial has occurred under the APRA, a person may file suit in the circuit or superior court in the county in which the denial took place to compel the public agency to disclose the public records requested. Ind. Code § 5-14-3-9(d).

The public record at issue in your complaint, the Accounts Payable Voucher Register, serves as a certification by a fiscal officer of claims received for payment for the period prior to a meeting of the fiscal body for the unit of government. See, Ind. Code §36-5-4-6. In the case of a town, the clerk-treasurer must prepare this register and list any claims received by the town more than five (5) days before the town council would meet to approve those claims. See, Ind. Code §3-5-4-4. Nothing in these statutes state when the clerk-treasurer would be required to create the register, but once created the register would be a public record subject to the APRA. A clerk-treasurer, upon request for a copy of the register would have to provide a copy of the register if he or she has a machine capable of making the copy. Ind. Code §5-14-3-8(e). If, however, the clerk-treasurer does not have a machine capable of making a photocopy, he or she must allow a requestor to inspect and make notes from the register under the APRA. Id.

According to your complaint, you have made repeated requests for copies of the docket or Accounts Payable Voucher register from the Clerk-Treasurer and you claim that she has denied you access under the APRA. She stated in her January 21st memorandum to you that she does not prepare the docket or register until the day before or the day of the Town Council's meeting at which the claims involved will be approved. The Clerk-Treasurer is not required under any statute to create dockets or voucher forms other than as specified in Indiana Code section 36-5-4-6.

Further, the docket is merely a list of the claims received by the Town for a certain time period. Ms. Gatchell has not denied you access to the individual claims, which would be disclosable public records once received in her Office and you would be entitled to inspect and copy these public records under the APRA.

With respect to dockets or registers that have been created, Ms. Gatchell states that she has made these public records available to you for inspection, but that she is not able to make a copy of them because they are oversized. The State Board of Accounts confirmed for me that these forms are not of a

standard copying size. Under Indiana Code section 5-14-3-8(e), Ms. Gatchell is required to allow you the opportunity to inspect and make notes from these dockets and it appears that this is her practice.

It is my opinion that the Clerk-Treasurer has not denied you access to public records by the Clerk-Treasurer in response to your requests dated January 20th, February 7th and February 19th. The Clerk-Treasurer is not required to create these dockets or registers for you upon request, but once created she must allow you to inspect and make notes from them.

CONCLUSION

It is my opinion that the Town of Roseland Clerk-Treasurer did not violate you access to public records in violation of the APRA with respect to your requests dated January 20, February 7 and February 19, 2003.

Sincerely,

Anne Mullin O'Connor

Enclosure

cc: Renee Gatchell, Town of Roseland w/o enclosure

¹ You filed two formal complaints, which both concerned the Town of Roseland Clerk-Treasurer for similar reasons. This Opinion responds to both complaints.

² You also listed a request from January 3, 2003. Under Indiana Code section 5-14-5-7, a formal complaint must concern alleged violations that occurred within thirty (30) days prior to its receipt in this Office. For this reason, my Opinion will not address the January 3rd request.