

August 19, 2003

Mr. Martin Hensley  
15 Wood St.  
Greenfield, IN 46140

*Re: Advisory Opinion 03-FC-61; Alleged Denial of Access to Public Records by the Rush County Board of Zoning Appeal*

Dear Mr. Hensley:

This is written in response to your formal complaint, which was received on July 21, 2003. You have alleged that the Rush County Board of Zoning Appeals ("BZA") violated the Indiana Access to Public Records Act ("APRA"), Indiana Code chapter 5-14-3. Specifically, you claim that the BZA denied you access to public records by failing to respond to your June 23, 2003 request. I discussed this matter with Mr. David Butsch by telephone on August 12, 2003. For the reason set forth below, it is my opinion that the BZA did deny you access to public records in violation of the APRA.

### BACKGROUND

According to your complaint, on June 23, 2003 you sent a request for public records of the BZA to the attention of Mr. Butsch. When you received no response from the BZA through its attorney you filed your formal complaint with this Office.

In response to your complaint, Mr. Butsch via telephone advised that he did not respond to your complaint. He further advised that some of the records would be provided because the BZA filing system would require that they perform a search for the records you requested.

### ANALYSIS

The public policy of the APRA states that "[p]roviding person 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 BZA 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 BZA 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. A denial is deemed to have occurred if seven (7) days elapse after the agency receives the request by U.S. Mail and there has been no response. Ind. Code § 5-14-3-9(b). 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 the information provided, the BZA did receive your request, but failed to respond within the seven (7) day period after receiving your request. For this reason, it is my opinion that the BZA did deny you access in violation of the APRA and that this denial is actionable under Indiana Code section 5-14-3-9(d).

### CONCLUSION

It is my opinion that the Rush County Board of Zoning Appeals did not respond to your requests for access to public records within the seven (7) day period required under Indiana Code section 5-14-3-9 (b) and that this failure constituted a denial that is actionable under the APRA.

Sincerely,

Sandra K. Barger  
Acting Public Access Counselor

Cc: Mr. David Butsch, Rush County Attorney