



STATE OF INDIANA

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June 6, 2008

Richard Dunkin
2416 South 5th Street
Terre Haute, Indiana 47802

Re: Formal Complaint 08-FC-119; Alleged Violation of the Access to Public Records Act by the Terre Haute Housing Authority Board of Commissioners

Dear Mr. Dunkin:

This advisory opinion is in response to your formal complaint alleging the Terre Haute Housing Authority Board of Commissioners ("Board") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by failing to respond to your request for access to records within the time allowed by the APRA. It is my opinion the Board violated the APRA by failing to respond to your request within the time allowed by the APRA if you delivered the request in person to the office of the Board but did not violate the APRA by indicating it would provide the requested records within approximately three weeks.

BACKGROUND

In your complaint you allege that on April 28, 2008 you hand-delivered a request for access to records of the Board to all Commissioners and to the Board's counsel. You received a written response, dated May 6, from the Board's counsel. The Board indicated it would provide you the requested documents to the extent they are disclosable and estimated it would take three weeks to compile the information. You filed this complaint on May 9, alleging the Board did not respond to your request within the time allowed by the APRA.

My office sent a copy of your complaint to the Board and the Board's counsel and invited the Board to respond to the complaint. To date this office has not received a response from the Board.

ANALYSIS

The public policy of the APRA states, "(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." I.C. § 5-14-3-1. The Board is clearly a public agency for the purposes of the APRA. I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy the public records of the Board during regular business hours unless the public records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. I.C. § 5-14-3-3(a).

A request for records may be oral or written. I.C. §§ 5-14-3-3(a), 5-14-3-9(c). If the request is made in person at the agency's office and the agency does not respond to the request within twenty-four hours of receipt, the request is deemed denied. I.C. § 5-14-3-9(a).

A response could be an acknowledgement that the request has been received and information regarding how or when the agency intends to comply. There are no prescribed timeframes when the records must be produced by a public agency. A public agency is required to regulate any material interference with the regular discharge of the functions or duties of the public agency or public employees. I.C. § 5-14-3-7(a). However, section 7 does not operate to deny to any person the rights secured by section 3 of the Access to Public Records Act. I.C. § 5-14-3-7(c). The public access counselor has stated that records must be produced within a reasonable period of time, based on the facts and circumstances. Consideration of the nature of the requests (whether they are broad or narrow), how old the records are, and whether the records must be reviewed and edited to delete nondisclosable material are necessary to determine whether the agency has produced records within a reasonable timeframe.

Here, you allege the Board did not provide a timely response to the request you hand-delivered to the Board members on April 28. You do not indicate whether you delivered the request to the Board's physical office or whether you personally delivered the request to the Board members. The APRA does not contemplate requests delivered in person to individual members of an agency or governing body. Instead, a request must be delivered to the agency's office. *See* I.C. § 5-14-3-9(a). If you delivered the request to the agency's office on April 28, the Board should have provided a response to the request within twenty-four hours, or by the same time on the next business day. As such, if you delivered the request to the Board's office, the May 6 response is untimely under the APRA.

The Board's indication that the records would be available in approximately three weeks is not a violation of the APRA. The APRA provides no timeframe when records must be produced by a public agency. You do not allege the three week timeframe to be a violation of the APRA, and it is my opinion three weeks is not an unreasonable amount of time to compile the information.

CONCLUSION

For the foregoing reasons, it is my opinion the Board violated the APRA by failing to respond to your request within the time allowed by the APRA if you delivered the request in person to the office of the Board but did not violate the APRA by providing the requested records within approximately three weeks.

Best regards,



Heather Willis Neal
Public Access Counselor

Cc: Tom Hunt, Terre Haute Housing Authority Board of Commissioners