



STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

PUBLIC ACCESS COUNSELOR
HEATHER NEAL

Indiana Government Town South
402 West Washington Street, Room W460
Indianapolis, Indiana 46204-2745
Telephone: (317)233-9435
Fax: (317)233-3091
1-800-228-6013
www.IN.gov/pac

September 22, 2008

Kimberly Jaroszewski
1963 South Park Avenue
Scherverville, Indiana 46375

Re: Formal Complaint 08-FC-207; Alleged Violation of the Access to Public Records Act by the Town of Scherverville

Dear Ms. Jaroszewski:

This advisory opinion is in response to your formal complaint alleging the Scherverville Town Council, Clerk-Treasurer and Attorney (hereinafter collectively referred to as the "Town") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by denying you access to records. A copy of the Town's response to the complaint is enclosed. In my opinion the Town did not violate the APRA.

BACKGROUND

You filed the present complaint on September 10, 2008, alleging the Town refused to provide you with responses to questions you presented in writing. You allege one question you submitted was a request for the procedure for obtaining a copy of a public document not available via the internet. You allege the response you received did not answer the question. You further allege that you sent a letter to the Town on July 11, 2008, wherein you requested transcripts from the July Town Council meeting.

The Town responded to your complaint by letter dated September 19 from attorney David Austgen. The Town contends that your complaint relates to the Town's refusal to address your inquiries. The Town contends that neither the APRA nor the Open Door Law ("ODL") (Ind. Code 5-14-1.5) requires a public agency to answer inquiries. The Town contends that to request records you need to go to the Town Clerk-Treasurer's office to complete and present a request for access to the records.

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 Town is clearly a public agency for the purposes of the APRA. I.C. § 5-14-

3-2(m). Accordingly, any person has the right to inspect and copy the public records of the Town 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 person may inspect and copy the records of a public agency during the regular business hours of the agency. The request for inspection and copying must identify with reasonable particularity the record being requested and be, at the discretion of the agency, in writing on or in a form prescribed by the agency. I.C. § 5-14-3-3(a). An agency should respond to the request within twenty-four hours when the request is made in person and within seven days if the request is received by mail or facsimile transmission. *See* I.C. § 5-14-3-9.

Nothing in the APRA requires an agency to answer a person's inquiries, whether submitted in person or in writing. Instead, the APRA protects the right of the public to inspect and copy public records. The person seeking access to records must specifically request the records by identifying the records with reasonable particularity. *See* I.C. § 5-14-3-3(a). Here, I see nothing in your original letter that resembles a request for access to records. Certainly you have submitted a number of inquiries to the Town, but neither the APRA nor the ODL requires the Town to respond to those inquiries.

You contend that your July 11 to the Clerk-Treasurer letter contained a request for access to the July Town Council meeting transcripts. To the contrary, you asked the Town Clerk-Treasurer to "include this letter, along with a transcript of the Town Council Meeting from Wednesday, July 9, 2008 as additional documentation and support for the Ethics Violation that I submitted." Rather than requesting access to records, you asked that the Clerk-Treasurer attach the transcript to a previous complaint you had submitted. This activity is not something contemplated by the APRA as a duty of the public agency. If instead you had asked the Clerk-Treasurer to make available to you for inspection and copying a copy of the transcript, that would have been a request for access as contemplated by the APRA.

The Town has indicated that you may request access to records by appearing at the office of the Clerk-Treasurer and completing the appropriate form. The agency is within its discretion under I.C. § 5-14-3-3(a) to require a form for such a request. I trust the Town would also mail, fax or otherwise send the form to you upon request so you could send the request form to the Town.

CONCLUSION

For the foregoing reasons, it is my opinion the Town has not violated the APRA.

Best regards,



Heather Willis Neal
Public Access Counselor

Cc: David Austgen, Town of Schererville