

April 28, 2008

Richard Jovanovich, Sr.  
1508 South 9<sup>th</sup> Street  
Clinton, Indiana 47842

*Re: Formal Complaint 08-FC-89; Alleged Violation of the Access to Public Records Act by the City of Clinton*

Dear Mr. Jovanovich:

This advisory opinion is in response to your formal complaint alleging the City of Clinton ("City") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by denying you access to records. The City's response to the complaint is enclosed for your reference. It is my opinion that if the City has indeed provided you access to inspect the requested records, it did not violate the APRA. If you have requested a copy of the records, the City is required to provide a copy if it has reasonable access to a copy machine.

#### BACKGROUND

You allege that in January 2008 you requested from the City a number of records concerning fiscal matters. You indicate the records are important to you because you are an elected official, serving on the City Council. You allege you have repeatedly been denied access, and the Clerk Treasurer has indicated she cannot access the information. You allege you were recently denied access on March 28. You requested priority status but did not allege any of the reasons for priority status listed in 62 IAC 1-1-3, so priority status was not granted.

The City responded to your complaint by undated letter from Kara Vorek, City of Clinton Clerk Treasurer. My office received the letter on April 9. Ms. Vorek contends you have "been advised" of where the information you requested is stored. Ms. Vorek indicates her understanding that she only has to make the information accessible for review.

#### 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

City 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 City 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 delivered by mail or facsimile, and the agency does not respond to the request within seven days of receipt, the request is deemed denied. I.C. § 5-14-3-9(b). If the request is made in person or by telephone and the agency does not respond within twenty-four hours, the request is deemed denied. I.C. § 5-14-3-9(a).

Here the Clerk Treasurer contends she has made the request records available for you to inspect. Certainly the APRA requires an agency to make public records available for inspection upon request, unless an exception to disclosure exists. I.C. § 5-14-3-3(a). If the Clerk Treasurer has shown you where the records are located and has allowed you access to the records, the agency has complied with the APRA.

The APRA further provides that if you are entitled to and request a copy of a record, the agency must provide a copy of the record if it has reasonable access to a machine capable of reproducing the record. I.C. § 5-14-3-8(e).

A public agency may not charge a fee to search for, examine, or review a record to determine whether the record may be disclosed. I.C. § 5-14-3-8(b). The fiscal body, or governing body if there is no fiscal body, of a public agency shall establish a fee schedule for the certification or copying of documents. The fee for copying documents may not exceed the greater of ten cents per page for non-color copies or the actual cost to the agency of copying the document. I.C. § 5-14-3-8(d). The copy fee may be charged in advance. I.C. § 5-14-3-8(e).

#### CONCLUSION

For the foregoing reasons, it is my opinion that if the City has indeed provided you access to inspect the requested records, it did not violate the APRA. If you have requested a copy of the records, the City is required to provide a copy if it has reasonable access to a copy machine.

Best regards,



Heather Willis Neal  
Public Access Counselor

cc: Mayor Jerry Hawkins, Mayor of Clinton  
Kara Vorek, City of Clinton Clerk Treasurer