

February 22, 2005

Lonnie and Diana Brumfield
P.O. Box 7
Cloverdale, IN 46120

Re: Formal Complaint 05-FC-22; Alleged Violation of the Access to Public Records Act by the Town of Cloverdale and the Cloverdale Volunteer Fire Department

Dear Mr. and Mrs. Brumfield:

This is in response to your formal complaint alleging that the Town of Cloverdale ("Town") and the Cloverdale Volunteer Fire Department ("Fire Department") violated the Access to Public Records Act ("APRA") by failing to respond to your request for certain records regarding the Fire Department. I find that the Town and the Fire Department failed to timely respond to your request for records.

BACKGROUND

During a public meeting of the Cloverdale Town Council on January 11, 2005, you requested records from the Town Council and the Fire Chief relating to the Fire Department. You later gave a written request for the same documents to Patti Truax, Cloverdale Town Clerk-Treasurer.

Specifically, you are seeking: 1) a list of names of the members of the new Cloverdale Volunteer Fire Department; 2) training records; 3) certification numbers; 4) who has been issued radios/pagers; 5) what are the member's dates of active service and the fire department they served on; 6) 2005 Budget plans; 7) amount spent so far; 8) when did the fire department's stated policy change from providing the town only fire coverage to also providing first responder service?

You filed your formal complaint with the Office of the Public Access Counselor on January 25, 2005. I sent a copy of your complaint to the Town and the Fire Department. I have been contacted by Attorney Michael Van Treese, who represents the Town and Fire Department. First, he acknowledged that no response to your request has been issued by the agencies. He

discussed with me the requirements of the Access to Public Records Act, and told me that the Town would issue a written response addressing each of the eight requests that you submitted.

ANALYSIS

Any person may inspect and copy the public records of a public agency during the agency's regular business hours, except as provided in section 4 of the APRA. Ind.Code 5-14-3-3(a). When a public agency receives a request for a record via telephone or in person, the public agency must respond to the requester within 24 business hours of receiving the request. If the request for a record is received by U.S. Mail, facsimile, or electronic mail, the public agency must respond within seven (7) calendar days of receipt. IC 5-14-3-9(a), (b). A response does not necessarily entail producing the records. Rather, you have the right to receive some communication from the agency regarding the agency's intent to examine your request and identify responsive records, together with the timeframe in which the agency expects to produce the records. You state that you delivered your request in person to the Town Council and the Fire Chief, and you imply that the request was delivered to Patti Truax in person although that is not clearly stated. In any case, as of Monday, February 21, no response had been sent by the Town or the Fire Department to your request for records. The Town and Fire Department have denied you a record by virtue of their failure to respond within the timeframes of the APRA, in violation of the law.

As I discussed with Mr. Van Treese, many of the records that you seek, if maintained by the Town or Fire Department, are disclosable public records. Other requests are likely to need clarification, such as your request for "amount spent so far" where the Town would need to know the beginning and ending dates for expenditures. I admonish the Town and the Fire Department to work expeditiously to respond and to produce the records that are disclosable, since its continued failure to respond or produce records is a continuing violation of the APRA.

CONCLUSION

For the foregoing reasons, I find that Town of Cloverdale and the Cloverdale Volunteer Fire Department violated the Access to Public Records Act.

Sincerely,

Karen Davis
Public Access Counselor

cc: Mr. Michael Van Treese