

February 19, 2007

Sent Via Facsimile

Kathy J. Sanders
6340 N. Private Road
North Vernon, IN 47265

Re: Formal Complaint 07-FC-17; Alleged Violation of the Access to Public Records Act by the Decatur County Area Plan Commission

Dear Ms. Sanders:

This is in response to your formal complaint alleging that Decatur County Area Plan Commission (“Plan Commission”) violated the Access to Public Records Act by refusing to provide the minutes from its January 3, 2007 meeting. I find that the Plan Commission violated the Access to Public Records Act.

BACKGROUND

In your complaint, you allege that you have been denied the January 2007 meeting minutes of the Plan Commission. You were initially told that you would be provided them once they were typed, but after you called the Plan Commission to inquire about the status of your request, Ms. Miller informed you that Mr. David Neuman, Plan Commission Director, stated that you could not have the minutes without providing a good reason. After you later renewed your request for the minutes, you were told that they were not public information until after the next Plan Commission meeting in February. When you spoke directly with Mr. Neuman about the minutes, he declined your invitation to mark the minutes “unofficial” and disclose the draft minutes before the next meeting.

I sent a copy of your complaint to the Plan Commission. No response from Mr. Neuman or any other Plan Commission representative has been received.

ANALYSIS

The Access to Public Records Act states:

[G]overnment is the servant of the people and not their master. Accordingly, it is the public policy of the state that all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees. Providing persons with the 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. This 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.

Any person may inspect and copy the public records of any public agency, except as provided in section 4 of the Access to Public Records Act (“APRA”). Ind. Code 5-14-3-3(a). If a public agency receives a request for a record in person or by telephone, the public agency is required to respond within 24 hours or the record is deemed denied. IC 5-14-3-9(a). If the public agency receives a request for a record via U.S. Mail or facsimile, the public agency is required to respond within seven calendar days, or the request is deemed denied. IC 5-14-3-9(b).

Your oral requests for the minutes have been denied orally, so the method for communicating the denial was consistent with the Access to Public Records Act. However, there was no basis for denying you the minutes or memoranda of the January 3 meeting. Two statutes require the Plan Commission to disclose the minutes of the January meeting to you without regard to whether the Plan Commission has adopted the minutes at a subsequent meeting.

First, the Open Door Law requires that memoranda from a meeting be available within a reasonable time after the meeting for the purpose of informing the public of the governing body’s proceedings. IC 5-14-1.5-4(c). In addition, the Access to Public Records Act requires that any public record of a public agency be available for inspection and copying unless exempt under section 4 of the Access to Public Records Act. There is no exemption in section 4 for draft minutes of a public meeting.

The Plan Commission’s continued denial of the draft minutes from the January 2007 Plan Commission meeting is a continuing violation of the Access to Public Records Act. This violation is actionable under Indiana Code 5-14-3-9(e). If you prevail in any lawsuit filed under IC 5-14-3-9, you would be entitled to recover attorney fees, court costs, and reasonable expenses of litigation from the Decatur County Area Plan Commission. *See* IC 5-14-3-9(i).

CONCLUSION

For the foregoing reasons, I find that the Decatur County Area Plan Commission has violated the Access to Public Records Act.

Sincerely,

Karen Davis
Public Access Counselor

cc: David Neuman