



STATE OF INDIANA

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May 31, 2011

Ms. Lynn A. Simms
180 W. Jo Jo Lane
Nineveh, IN 46164

Re: Formal Complaint 11-FC-114; Alleged Violation of the Access to Public Records Act by the Town of Prince's Lakes

Dear Ms. Simms:

This advisory opinion is in response to your formal complaint alleging the Town of Prince's Lakes ("Town") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.*. My office forwarded a copy of your complaint to Debbie Workman, the Town's clerk-treasurer, but we have not yet received a response.

BACKGROUND

According to your complaint, you hand-delivered a public records request to Ms. Workman's office on April 15, 2011. You followed up with an email request the same day and filed an additional in-person request on April 21st. In response, Ms. Workman informed you she "did not have time on said dates." As of April 28th, you had not received any additional response to your request. You seek access to various financial statements of the Town, which are of interest to you in your capacity as a member of the Town's council.

ANALYSIS

Under the APRA, 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 in person and the agency does not respond within 24 hours, the request is deemed denied. I.C. §5-14-3-9(a). A response from the public agency need not be a physical production of records; it could simply be an acknowledgement that the request has been received and information regarding how or when the agency intends to comply. Here it appears Ms. Workman denied your request by stating that she "did not have time" for it. Under the APRA, when a request is made in writing and the agency denies the request, the agency must deny the request in writing and must include a statement of the specific exemption or exemptions authorizing the

withholding of all or part of the record and the name and title or position of the person responsible for the denial. I.C. § 5-14-3-9(c). Because it does not appear that the Town has responded with any statutory basis for denying your request, the Town's failure to deny your request in accordance with subsection 9(c) violated the APRA.

Without the benefit of a response from the Town, it is unclear to me why your request was denied. Some of the records you requested could be confidential under one or more exceptions listed in section 9 of the APRA. *See generally* I.C. § 5-14-3-4. Under the APRA, a public agency that withholds a public record bears the burden of proof to show that the record is exempt. I.C. §§ 5-14-3-1, 5-14-3-9(f) and (g). Exceptions to disclosure are narrowly construed. I.C. § 5-14-3-1. Because the Town has not provided a justification for withholding the records at issue here, it is my opinion that the Town has failed to sustain its burden of proof. If the Town cannot justify withholding the records under the APRA, I encourage the Town to release all responsive records to you. To the extent the Town persists in its denial of access following the issuance of an advisory opinion from this office and you believe the Town is in violation of the APRA, I leave you to your remedies before a court pursuant to Ind. Code § 5-14-3-9(e).

CONCLUSION

For the foregoing reasons, it is my opinion that if the Town failed to respond to your request with a statutory basis for its denial, the Town violated section 9 of the APRA. If the Town cannot cite to a statutory basis for withholding the records you requested, the Town should release them to you as soon as practicable.

Best regards,



Andrew J. Kossack
Public Access Counselor

cc: Debbie Workman