



STATE OF INDIANA

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June 17, 2008

Dan and Karen Hoagland
1114 Lake Drive, Clear Lake
Fremont, Indiana 46737

Re: Formal Complaint 08-FC-138; Alleged Violation of the Access to Public Records Act by the Town of Clear Lake

Dear Mr. and Mrs. Hoagland:

This advisory opinion is in response to your formal complaint alleging the Town of Clear Lake ("Town") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by failing to respond to your request for access to records. I have enclosed a copy of the Town's response to the complaint for your reference. It is my opinion the Town violated the APRA by failing to respond to the request.

BACKGROUND

You allege that on April 30, 2008 you mailed to the Town Clerk a request for access to records, namely a copy of the Town's record retention policy. You provide evidence the Clerk received the request on May 2. You mailed this complaint on May 19, alleging you had received no response. My office received the complaint on May 22.

The Town responded to the complaint by letter dated June 9 from attorney Neal Blythe. The Town contends that it does not maintain a records retention policy and is not required by the APRA to create one upon request. The Town contends that opinions from this office have been consistent in finding no denial of access for failing to produce a record that does not exist. Finally, the Town provides information related to its response to a previous request you made.

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. 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 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).

While the Town is correct in that this office has repeatedly indicated an agency is not required under the APRA to create a record that does not exist, the agency is incorrect in its assumption that it is not required to respond to the request. The Town must respond to every request for access to records it receives, even if the response is that no such records exist. *See* I.C. § 5-14-3-9(b). The Town's failure to respond within seven days of receipt of the request constitutes a denial of access.

CONCLUSION

For the foregoing reasons, it is my opinion the Town has violated the Access to Public Records Act by failing to respond to your request.

Best regards,



Heather Willis Neal
Public Access Counselor

Cc: Neal Blythe, Mefford, Weber and Blythe, P.C.