



STATE OF INDIANA

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March 5, 2013

Mr. Roger Kunkel
322 E Washington St.
New Richmond, Indiana 47967

Re: Formal Complaint 13-FC-59; Alleged Violation of the Access to Public Records Act by the Town of New Richmond

Dear Mr. Kunkel:

This advisory opinion is in response to your formal complaint alleging the Town of New Richmond ("Town") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Kathy Sering, Clerk-Treasurer, responded on behalf of the Town. Her response is enclosed for your reference.

BACKGROUND

In your formal complaint, you allege that on November 5, 2012 and January 15, 2013, you submitted a request to the Town for records concerning the number of gallons of gasoline purchased by the Town in 2011 and 2012, the total dollars spent on gasoline in 2011 and 2012, and the miles traveled on the gasoline purchased. You further allege that the Town has failed to respond in any fashion to either request that was submitted.

In response to your formal complaint, Ms. Sering provided a copy of your May 9, 2012 request for records which sought the Town's "Salary Ordinance for 2012, the number of gallons of gasoline purchased by the Town, water and sewage for the years 2011 and the first four months of 2012." Ms. Sering responded in writing to your request the day after its receipt and provided the information and/or records that were responsive to your request. On February 6, 2012, you submitted a request for copies of the Town Board's memoranda from December 19, 2011 and the Town's payroll for 2011. On February 7, 2012, Ms. Sering again responded to your request and provided you with the salary figures that had been requested and advised that the Town Board did not meet on December 19, 2011, thus there were no records responsive to your request for memoranda.

Ms. Sering further advised that she and the Town Board have had continuous problems with you. You have stated to a local newspaper that you were consistently being denied access to the records of the Town; however when asked in a public meeting

if Ms. Sering had every denied your request, you provided that she had not. Ms. Sering further advised that she had been dealing with personal issues since November 2012 and has not been in the office very much.

ANALYSIS

The public policy of the APRA states that “(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.” *See* I.C. § 5-14-3-1. The Town is a public agency for the purposes of the APRA. *See* I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy the Town’s public records during regular business hours unless the records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. *See* I.C. § 5-14-3-3(a).

A request for records may be oral or written. *See* 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. *See* I.C. § 5-14-3-9(a). If the request is delivered by mail or facsimile and the agency does not respond to the request within seven (7) days of receipt, the request is deemed denied. *See* I.C. § 5-14-3-9(b). A response from the public agency could be an acknowledgement that the request has been received and include information regarding how or when the agency intends to comply. Here you provide that you submitted written requests for records to the Town on November 5, 2012 and January 15, 2013, to which the Town has failed to respond in any fashion. In response, Ms. Sering provided copies of correspondence regarding requests that you had previously made in February 2012 and May 2012. Ms. Sering further advised that since November of 2012 she had been out of the office for extended periods of time dealing with a personal issue. It is my opinion that the Town acted contrary to section 9(b) of the APRA by not responding to your written requests for records that were submitted in November 2012 and January 2013 within seven (7) days of their receipt.

CONCLUSION

For the foregoing reasons, it is my opinion that the Town acted contrary to the requirements of section 9(b) of the APRA by failing to respond in writing within seven (7) days of the receipt of your request for records that were submitted in November 2012 and January 2013.

Best regards,



Joseph B. Hoage
Public Access Counselor

cc: Nancy Sering