

March 28, 2007

Steven M. Kelly  
President and CEO  
Union Products International, Incorporated  
One Industrial Drive  
Cromwell, IN 46732

*Re: Formal Complaint 07-FC-50; Alleged Violation of the Access to Public Records Act by the Town of Cromwell Municipal Utilities*

Dear Mr. Kelly:

This is in response to your formal complaint alleging that the Town of Cromwell Municipal Utilities (“Town”) violated the Access to Public Records Act by denying you records. I find that the Town is required to provide the records within a reasonable period of time. In addition, the Town is required to make reasonable efforts to provide electronically stored records and may charge its direct cost if the Town must reprogram the computer to separate social security numbers.

#### BACKGROUND

You alleged that your many requests for records from the Town culminated in a denial because the Town claimed it was too busy with reports to get the records. Although the Town has electronically stored records from March of 2000 and paper records from 1999, the Town has refused to provide them to you. You appended to your complaint an “updated and expanded list” of records, which includes 1) two specified ordinances; 2) water and sewer records by invoices and receipt to each meter with names of users; 3) annual accounting records since November 1998 of the town and town utilities, including bank records and reconciliation; 4) the latest town budget; 5) a copy and third party certification of the current meter readings; and 6) registered voters for precinct #2.

I sent a copy of your complaint to the Town. I enclose a copy of the response, submitted by Steven C. Hagen, attorney for the Town. Mr. Hagen explained that the request for computer

records that you made in person could not then be immediately produced because the computer records contain social security numbers which are not disclosable. Since the time of your request, the printed backup reports of the utility database have been discovered to not have social security numbers. These printouts are the hard copy backup of the electronically stored records. These records consist of thirty-three boxes of printed reports which the clerk treasurer, the only administrative employee of the Town, will have to copy and organize at an estimate of two (2) hours' time per box. The clerk treasurer can copy two boxes of records per week with an estimated investment of four (4) hours per week without adversely impacting the continued operation of the Town. The first two boxes will be copied within 10 days from the date of the letter and the remaining boxes copied at a rate of two boxes per week.

If you wish the information in electronic form, the Town has contacted the software provider and obtained a price per hour for the reprogramming necessary to provide the data in the form you have requested. You should contact the Town if you wish to receive the records so that the Town can allow you to make arrangements to pay the Town's direct cost of reprogramming the computer.

Mr. Hagen addressed each of your requests. The Town has now mailed the Town's ordinances. The requests for the customer records, contained in your items numbered 3 and 4, are subject to the above timeframe. The latest Town budget has been mailed as well as current water meter readings. The Town does not procure a third party's certification and the Town is under no obligation to do so. Hence, there is no certification to disclose to you. The Town does not maintain a record of registered voters for precinct number 2.

## ANALYSIS

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). A response may be an acknowledgement that the request has been received, and some indication of how or when the agency intends to comply.

A public agency may regulate any material interference with the regular discharge of the functions or duties of the public agency or public employees. IC 5-14-3-7(a). Section 7 does not operate to deny to any person the rights secured by section 3 of the Access to Public Records Act. IC 5-14-3-7(c). A public agency should produce its records within a reasonable period of time under the circumstances, in the absence of any specific guidelines in the APRA for when a public agency must provide its records.

The Town has explained in its complaint response that it could not provide the computer records immediately, but has not stated whether the Town had told you when it could comply with your requests. Rather, it appears from your complaint that the Town did not provide any records for several months. This does not appear to be reasonable, particularly for requests such

as ordinances and budgets. It is not clear from your complaint what you had requested prior to the complaint, since your complaint “updates and expands” the records you had requested previously. The Town has not adequately responded to your complaint in terms of the reasonableness of the time it was willing to produce records. Although it is true that the Town did not have to set aside other business to address your request, the Town cannot suspend your request indefinitely.

From the complaint response setting forth the timeframes within which the paper records relating to the individual accounts could be compiled, the Town’s timeframe appears reasonable, but it is my opinion that the Town could have and should have told you this before you filed this formal complaint.

Except as provided in subsection (e), a public agency that maintains or contracts for the maintenance of public records in an electronic data storage system shall make reasonable efforts to provide to a person making a request a copy of all disclosable data contained in the records on paper, disk, tape, drum, or any other method of electronic retrieval if the medium requested is compatible with the agency's data storage system. IC 5-14-3-3(d).

With respect to the electronically stored records, the APRA sets forth several provisions with respect to the fee for providing the records. A public agency may charge a person who makes a request for disclosable information the agency's direct cost of reprogramming a computer system if:

(1) the disclosable information is stored on a computer tape, computer disc, or a similar or analogous record system; and

(2) the public agency is required to reprogram the computer system to separate the disclosable information from nondisclosable information. IC 5-14-3-6(c). "Direct cost" means one hundred five percent (105%) of the sum of the cost of:

(1) the initial development of a program, if any;

(2) the labor required to retrieve electronically stored data; and

(3) any medium used for electronic output;

for providing a duplicate of electronically stored data onto a disk, tape, drum, or other medium of electronic data retrieval under section 8(g) of this chapter, or for reprogramming a computer system under section 6(c) of this chapter. IC 5-14-3-2(c).

Accordingly, if the Town must reprogram the computer to separate the social security numbers from the records,<sup>1</sup> it may charge you the direct cost of reprogramming the computer. It is not clear to me why the hard copy back-up version of these records does not contain social security numbers. I recommend that the Town explain to you why it must reprogram the computer to separate the social security numbers when the hard copies do not contain social security numbers.

In addition, the Town may charge its direct cost for providing a duplicate of a computer tape, computer disc, microfilm, or similar or analogous record system containing information owned by the public agency or entrusted to it. The fee must be uniform to all purchasers, and

---

<sup>1</sup> A public agency may not disclose a social security number contained in the public agency’s records. IC 5-14-3-4(a)(12).

may not exceed the sum of the following:

- (1) The agency's direct cost of supplying the information in that form.
- (2) The standard cost for selling the same information to the public in the form of a publication if the agency has published the information and made the publication available for sale. IC 5-14-3-8(g).

The belated response provided by the Town appears to meet the requirements of the Access to Public Records Act. The Town apparently does not maintain the record of registered voters and does not have a certification of meter readings. A public agency is not required to compile or create a record to satisfy a person's request for information. Rather, the APRA requires that a public agency make available its current records.

#### CONCLUSION

For the foregoing reasons, I find that the Town of Cromwell should have responded by stating when the Town intended to provide its paper records, along the lines of the timeframes contained in its response to your complaint.

Sincerely,

Karen Davis  
Public Access Counselor

cc: Steven C. Hagen