



STATE OF INDIANA

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February 14, 2011

Mr. Gary VanHook
P.O. Box 155
Atlanta, IN 46031

Re: Formal Complaint 11-FC-28; Alleged Violation of the Access to Public Records Act by the Atlanta Town Council

Dear Mr. VanHook:

This advisory opinion is in response to your formal complaint alleging the Atlanta Town Council ("Council") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* The Council's response via its attorney, Aaron Culp, is enclosed for your reference.

BACKGROUND

In your complaint, you state that you submitted a records request to Town of Atlanta Clerk Robyn Emmert on January 5, 2011. You claim that you personally delivered the written request. As of January 10th, you had not received a response. You argue that the Council's failure to respond after five days was in violation of the APRA.

In response, Mr. Culp states that the Council received your letter on January 5th and responded on January 12th. He argues that the Council had seven days to respond to your request and denies that any violation of the APRA occurred.

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." I.C. § 5-14-3-1. The Council is 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 Council's public records during regular business hours unless the records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. I.C. § 5-14-3-3(a).

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 by mail or facsimile and the agency does not respond to the request within seven (7) days of receipt, the request is deemed denied. I.C. § 5-14-3-9(b). However, 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). If an agency denies a request that the requester submitted in writing, the agency must issue its denial in writing and must include a statement of the specific exemption or exemptions authorizing the withholding of all or part of the record along with the name and title or position of the person responsible for the denial. I.C. § 5-14-3-9(c). Thus, the Council should have responded to your hand delivered request within 24 hours. Its failure to deny or otherwise respond to those requests in accordance with subsection 9(c) violated the APRA.

Because you do not allege that the substance of the Council's denial violated the APRA, I express no opinion on that issue.

CONCLUSION

For the foregoing reasons, it is my opinion that the Council should have responded to your hand delivered request within 24 hours. The Council did not otherwise violate the APRA.

Best regards,



Andrew J. Kossack
Public Access Counselor

cc: Aaron P. Culp