



# STATE OF INDIANA

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September 19, 2008

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

*Re: Formal Complaint 08-FC-202; Alleged Violation of the Access to Public Records Act by the Clear Lake Town Clerk*

Dear Mr. and Mrs. Hoagland:

This advisory opinion is in response to three formal complaints you filed alleging the Clear Lake Town Clerk ("Clerk") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by denying you access to records. Because of the similar nature of the complaints, I have consolidated the three complaints and now issue this one opinion in response. It is my opinion the Clerk has violated the APRA.

## BACKGROUND

You mailed your complaints on August 22, 2008, and my office received them on August 26. You allege that on June 27 you requested access to inspect the book of Town Council meeting minutes, which was made available for inspection. You further allege you requested access to the book of plan commission meeting minutes and book of board of zoning appeals meeting minutes, neither of which were provided. You provide a copy of a response from the Clerk indicating the office is searching for the books. The response was made on the bottom of the June 27 request form, but I do not have information regarding when the response was made.

In your second complaint, you allege you requested on June 27 access to inspect the "Town Meeting Minutes 1971" and the "Plan Commission Meeting Minutes 1971." You allege neither were made available for inspection. You again provide a copy of the request form with a handwritten note from the Clerk indicating the office is still searching for the records and will notify you when they are located.

In your third complaint, you allege that on July 1 you made a request for the Clerk's handwritten Town Council meeting notes and memoranda for Town Council meetings in 2006. You provide a copy of a response from the Clerk dated July 1 indicating she would contact you when the records are available.

You allege the Clerk has taken an unreasonable amount of time to produce the requested records.

My office sent a copy of the complaints to the Clerk and invited the Clerk to respond to the complaints. To date my office has not received a response from the Clerk.

## 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 Clerk is clearly a public agency for the purposes of the APRA. I.C. § 5-14-3-2(m). Accordingly, any person has the right to inspect and copy the public records of the Clerk 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 made by the requester physically appearing in the office of the agency and twenty-four hours have elapsed after any employee of the agency refuses inspection, a denial has occurred. I.C. § 5-14-3-9(a).

Here, you appeared at the Clerk's office on June 27 and July 1 and delivered requests for access to records. While I cannot ascertain definitively when the Clerk's responses to the June 27 requests were provided, it appears they were provided at the time of the request. The July 1 response appears to have also been provided the day of the request. If this is true, it is my opinion the initial response was timely under the APRA.

While the APRA requires a response within a specific timeframe, the same is not true for production of the requested records. A response could be an acknowledgement that the request has been received and information regarding how or when the agency intends to comply. There are no prescribed timeframes when the records must be produced by a public agency. A public agency is required to regulate any material interference with the regular discharge of the functions or duties of the public agency or public employees. I.C. § 5-14-3-7(a). However, section 7 does not operate to deny to any person the rights secured by section 3 of the Access to Public Records Act. I.C. § 5-14-3-7(c). The public access counselor has stated that records must be produced within a reasonable period of time, based on the facts and circumstances. Consideration of the nature of the requests (whether they are broad or narrow), how old the records are, and whether the records must be reviewed and edited to delete nondisclosable material are necessary to determine whether the agency has produced records within a reasonable timeframe.

Here, you seem to contend that the Clerk should have made the requested records available immediately. Nothing in the APRA provides that a person has a right to inspect

records on demand. Instead, the agency must respond to the request within twenty-four hours and produce the records in a reasonable amount of time. Because I do not have the benefit of a response to the complaint from the Clerk, I do not know the reason(s) the Clerk has yet to provide you access to the records.

While the records requested may take the Clerk some time to locate and make available, in my opinion the Clerk should have provided a status report at some point after the June 27/July 1 responses. When you submitted your complaints, more than seven weeks had passed since the initial response. Absent further information from the Clerk explaining the delay in providing access to the records, it is my opinion the Clerk has taken an unreasonable amount of time to produce the requested records and as such has denied you access to the records.

### CONCLUSION

For the foregoing reasons, it is my opinion the Clerk has violated the APRA.

Best regards,



Heather Willis Neal  
Public Access Counselor

Cc: Clear Lake Town Clerk Ginny Nye