

April 29, 2008

Cheryl Gridley
137 East Pendle
South Bend, Indiana 46637

Re: Formal Complaint 08-FC-94; Alleged Violation of the Access to Public Records Act by the Town of Roseland

Dear Ms. Gridley:

This advisory opinion is in response to your formal complaint alleging the Town of Roseland ("Town") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by denying you access to records. The Town's response to the complaint is enclosed for your reference. It is my opinion the Town did not violate the APRA.

BACKGROUND

You allege that on April 3, 2008 you send by facsimile transmission a request for access to records to the Town. You filed this complaint on April 14, alleging you had received no response.

The Town responded to the complaint by letter dated April 21 from attorney Michael Lipsky. Mr. Lipsky contends that the Town sent a response to your request by facsimile transmission. The fax was sent to the same number from which you sent the request. Further, Mr. Lipsky contends that in response to a previously submitted request, the Town telephoned you using the telephone number you provided and was told by the person who answered that she was not your secretary. As such, the Town could not reach you by telephone to let you know the records in response to that request were ready for you to collect. Finally, Mr. Lipsky contends that the Town has prescribed a form to be utilized for requests and you are aware of the form, having recently ended your term as Town Clerk Treasurer.

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, facsimile, or email 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). The request must be, at the discretion of the agency, in writing in or on a form prescribed by the agency. I.C. § 5-14-3-3(a).

Here you faxed the request on April 3. The Town contends, and provides evidence, it sent a return fax to you on the following day, well within the seven days allowed by the APRA. *See* I.C. § 5-14-3-9(b). The Town contends it utilized the fax number from which you sent the request because the telephone number you had provided had not been useful in responding to a recent request. Because the Town sent the response to you the day after receiving the request, it is my opinion the Town did not violate the APRA.

Further, the Town may exercise its discretion to prescribe a form for such requests. I.C. § 5-14-3-3(a). Since the Town has done so, I would advise you to use the appropriate form for future requests.

CONCLUSION

For the foregoing reasons, it is my opinion the Town did not violate the APRA.

Best regards,



Heather Willis Neal
Public Access Counselor

cc: Michael Lipsky
Susan Hammons, Town of Roseland