

June 23, 2004

Mr. Ronald W. Thomas  
7 Cool Creek Circle  
Carmel, Indiana 46033

*Re: Formal Complaints 04-FC-88, 04-FC-89 (consolidated);  
Alleged Denial of Access to Public Records by the Town of Westfield*

Dear Mr. Thomas:

This is in response to your formal complaints alleging that the Town of Westfield (Town) violated the Access to Public Records Act (APRA) (Ind. Code 5-14-3), when it failed to provide a timely written response to your requests for records and when it further failed to produce responsive records. The Town's responses to your complaints are enclosed. For the reasons set forth below, I conclude that the Town did violate your right to a timely written response to your written records requests. I further conclude that the Town did not otherwise deny you access to public records.

#### BACKGROUND

Your complaint in 04-FC-88 alleges that on April 25, 2004, you made a written request for records to the Community Development Director for the Town of Westfield, where you serve as a member of the Town Council. Your request, sent by electronic mail, sought information and all correspondence on projects being handled by that Town department. You allege that the Community Development Director verbally acknowledged during an April 27, 2004, meeting of the Town Council that he received your request; however, you did not get a written response until May 14, 2004. The response, submitted to all members of the Town Council, included a two-page spreadsheet compiling information on 17 projects. You assert that the response was not timely, the production was incomplete, and the content of the record produced is incorrect. This complaint followed.

Your complaint in 04-FC-89 alleges that on April 25, 2004, you made a separate written request for records to the Town Manager for the Town of Westfield. This request, also sent by electronic mail, sought information that office received from the Township Assessor's Office and any information concerning an annexation issue. You

allege that the Town Manager verbally acknowledged during an April 27, 2004, meeting of the Town Council that he received your request; however, you did not get any written response to this request and no records have been produced. This complaint followed.

In response, the Town does not answer your allegations that it failed to provide timely written responses to your requests. Neither does the Town respond to your claim that the records produced in response to your request in 04-FC-88 were incomplete and inaccurate. The Town asserts that you are a Town Council member with 24-hour access to the records of the Town and to the Town's reproduction equipment. The Town further responds that it will provide you with a written letter confirming your unrestricted access to all of the records of the Town.

### ANALYSIS

Indiana Code 5-14-3-3(a) provides that any person may inspect and copy the public records of any public agency during the regular business hours of the agency, except as otherwise provided in the APRA. IC 5-14-3-3(a). A "public record" means any writing, paper, report, study, map, photograph, tape recording or other material that is created, received, retained, maintained or filed by or with a public agency. IC 5-14-3-2. A request for access to a public record may be made orally or in writing. A written request requires a written response, and a written response to a request served by mail, including electronic mail, must be provided within seven days of receipt of the request. IC 5-14-3-9(b).

Here, you submitted written requests for records by electronic mail. Notwithstanding your position as a member of the Town Council, the Town was required to provide you with a written response within seven days of receipt. While the record before me does not indicate when the requests were received, you allege (and the Town does not dispute) that the Town acknowledged receipt during a public meeting on April 27, 2004. Thus, at the outside, the Town's written responses were due on or before May 4, 2004. The written response in 04-FC-88 was tendered on May 15, 2004, 11 days late. No written response was provided in 04-FC-89. The Town's failure to provide you with timely written responses to your requests violates the APRA. That is so even if the responses would have simply informed you, as it now appears they will do, that you have unrestricted access to all of the Town's records.

While I find that the Town's failure to respond in writing and in a timely manner violates the Town's response obligations under the statute, I cannot find that the Town is otherwise denying you access to public records. That is so because, as the Town now clearly states, you have 24-hour and unrestricted access to the Town's records as a member of the Town Council. The Town makes this averment in its response to your complaints, and further asserts that letters to this effect will be forthcoming. In my opinion, your unrestricted access to the Town's records precludes any finding that the Town is violating your right to access to public records under the APRA.

### CONCLUSION

For the reasons set forth above, I conclude that the Town failed to provide you with a timely written response to your written records requests. I further conclude that the Town did not otherwise deny you access to public records where it provides you, by virtue of your position, with unrestricted access to all Town records.<sup>1</sup>

Sincerely,

Michael A. Hurst  
Public Access Counselor

cc: Mr. Brian J. Zaiger

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<sup>1</sup> I offer no opinion on your claim that the information in the records that were delivered to you in response to your request is inaccurate. Whether the information contained in the records maintained by the Town is accurate is not a public access issue subject to my authority as Public Access Counselor.