

October 5, 2005

Sent Via Facsimile

Mr. Vladimir M. Ganz
Box 236
Beverly Shores, IN 46301

Re: Formal Complaint 05-FC-181; Alleged Violation of the Access to Public Records Act by the Town of Beverly Shores Building and Site Committee

Dear Mr. Ganz:

This is in response to your formal complaint alleging that the Town of Beverly Shores Building and Site Committee ("Town") violated the Access to Public Records Act ("APRA") by failing to give you records. I find that the Town did not violate the APRA.

BACKGROUND

You stated that on August 10, 2005, you sent an e-mail requesting specific information regarding citations, stop work orders or any letters of corrective action "for all properties in Beverly Shores" from the Building Commissioner, Hans Lagoni. You enclosed a copy of your e-mail message. Item #1 was a question, not a request for records. In item #2 you stated "Please provide me with all of the "Citations," "Stop Work Orders," or any letters from you issuing corrective action *to the following properties, if any*. This should be public record." You then listed two permits by number.

There were six addressees in the "To" part of the e-mail. Your next message, dated August 24, showed that you sent an e-mail to hlagoni@comcast.net, which is not an address that appeared in your original e-mail. In this message, you remind Mr. Lagoni of your record request and state that the law allows 10 days for an agency to produce public information. Mr. Lagoni appears to have e-mailed you on August 24, from the comcast.net address, stating that he is gathering records but was unable to estimate a completion date. He stated that the records production would be "soon." He reminded you that the building commissioner is a part-time

position, and stated that he had been preparing for the building site committee meeting on the 20th. You filed your formal complaint with the public access counselor on September 7, 2005, stating that you have not received the records. The complaint was dated August 30.

I sent a copy of your complaint to Mr. Lagoni. I received responsive letters from Mr. Lagoni and from attorney William F. Herrbach, on behalf of the Town. Mr. Lagoni averred that he had initially responded to you on August 18. He enclosed a copy of an August 31 letter he sent you enclosing copies of the corrective action letters you sought. He also gave you additional information in response to your question. On September 11, he wrote a follow-up letter stating that he had completed his review of the thirty-three building permits issued under his signature, and found one that had a corrective action letter. He also indicated on what property he had issued a violation letter, indicating that the letter was attached. He stated that he believed that your request had been fulfilled with the September 11 production of records.

Mr. Herrbach stated that your request was not for any particular properties, but rather showed permit numbers. He also stated that the Town Clerk is the custodian of town records and the person to whom you should have addressed your original request. Mr. Lagoni never denied your request, but complied as soon as he could, given his part-time status.

ANALYSIS

Any person may inspect and copy the public records of any public agency during the agency's regular business hours, except as provided in section 4 of the APRA. Ind. Code 5-14-3-3(a). A public agency that receives a request by U.S. Mail or facsimile is required to issue a response within seven (7) days of receipt. The Public Access Counselor has stated that with respect to a request received by electronic mail, the public agency has seven days in which to issue a response.

Given the facts, it is not clear that you made your request to the Town, however. Your first e-mail bears several addressees, none of which appear to be the same as the address to which subsequent e-mails involving Mr. Lagoni were sent or received. In *Opinion of the Public Access Counselor 00-FC-38*, this office opined that the APRA obligates *public agencies*, not individuals, to respond to public records requests. Hence, if you sent your e-mail to the Town, then the Town would have been obligated to issue a responsive letter or call you within seven days. If you sent your request to Mr. Lagoni on his personal e-mail, for example, I do not believe that you filed your request with a public agency. Hence, no violation of the APRA would have occurred in the case of a late response.

In any case, a response within those timeframes does not have to include production of the records. The APRA does not set out a time within which an agency must produce records. The legislature may have recognized the difficulty in prescribing strict timeframes to produce a record because some requests are voluminous, and public agencies may not have dedicated staff to handle record requests, as just two factors. It is not the law in Indiana that records are required to be provided within 10 days. Rather, the public agency is required to provide records within a reasonable timeframe, under the facts and circumstances.

I am not prepared to state that three weeks is an unreasonable time for the Town to have produced the records you sought. Chiefly, I am persuaded that a part-time building commissioner handling the task of locating responsive records and other duties of the office, one of which was preparing for a building site meeting on August 20th, militates against finding that the record production was unreasonable. It appears that the Town has provided you with responsive records that required some amount of research.

Also, although you stated in your complaint that you asked for citations, stop work orders and letters of corrective action “for all properties in Beverly Shores,” I do not read your request so broadly. If you believe that the records you received do not include information you meant to request, you should consider how to frame your request more clearly. As Mr. Herrbach suggested, it would be wise to send future requests for records to the Town Clerk so that you can be confident that you are serving your request to the Town, not to an individual.

CONCLUSION

The Town of Beverly Shores Building and Site Committee did not violate the Access to Public Records Act.

Sincerely,

Karen Davis
Public Access Counselor

cc: Mr. William Herrbach