

May 16, 2005

Tanya Hiatt
305 N. Sycamore St.
P.O. Box 264
Gaston, IN 47342-0264

Re: Formal Complaint 05-FC-69; Alleged Violation of the Access to Public Records Act by the Gaston Police Department and Gaston Town Board

Dear Ms. Hiatt:

This is in response to your formal complaint alleging that the Gaston Police Department (“Department”) and Gaston Town Board (“Board”) violated the Access to Public Records Act (“APRA”) by failing to provide you with a copy of an incident report, which you requested on April 4, 2005. I find that the Department and the Board failed to comply with the Access to Public Records Act.

BACKGROUND

On April 4, 2005 you made an APRA request to the Department to obtain a copy of an incident report, which you believe the Department created to document a previous request for documents, made by you. You were informed by the Department that an incident report is created when citizens ask for “a lot of copies.” Initially, the Department sent you a letter on April 11, 2005 stating that you could pick up a copy of the report on or after April 13, 2005. However, when you arrived to pick up the report the Town Clerk informed you that she had been told by the Marshal to put the report on “hold” after speaking to this office and to their attorney.

Following the Department’s refusal to provide you with a copy of the report, you made a verbal request at the Town Board meeting of April 14, 2005 to the Board to allow you to see the report and to provide you with a copy. You stated that the Board’s response was that you could not have a copy because they cannot release “any reports they are working on or are criminal [sic] and can’t release it legally.”

I sent a copy of your complaint to the Town. On May 16, 2005 my office spoke with Jennifer Shell, Clerk-Treasurer for the Town of Gaston. Ms. Shell stated that your request had been put on hold because concerns had arisen that the Department was charging incorrectly for copies. She stated that because of the Department's concern it placed a hold on the request until it could determine what a reasonable fee for copies would be. The notice that you received, informing you of the hold appears to be a handwritten note signed by Ms. Shell which states,

Jimmy Oliver called me at home at 9:30 pm 4/13/05; to let me know that Tanya Hiatt's Report has been on hold due to talking to PAC and the attorney. He want me to relate this message to Tanya Hiatt.

Thank you

/s/ Jennifer Shell

Clerk-Treasurer

4/14/05 @ 10:00 am.

Ms. Shell stated that you have since received a copy of the incident report. She is certain that you received a copy on April 28, 2005. She thought that you could have received a copy as early as April 21, 2005, since she has a receipt for copies on that date as well.

Ms. Shell also stated that the reason the Board did not give you a copy when you requested it at the meeting was that the Board president did not want to stop the meeting to provide you with the opportunity to go back and inspect the record. She said that he also told you that they were in the process of determining what they could legally charge for the document. The minutes of the April 14th meeting, provided by Ms. Shell, state:

Public Comments

...

Tanya Hiatt spoke on getting an incident report; she was told that it has been put on hold. She asked the board if she could see the report tonight or the board to look at the report. Theodore Brown told her no. She ask if she could have that in writing; Theodore Brown told her no and that she could see the incident report when we find out the legal way to hand it out.

...

In addition, you have provided my office with a copy of the "Paperwork Protocol" for the Gaston Police Department, which states, "All copies of reports will be released through the Town Clerk's Office, between the hours of 10:00am and 4:00 pm."

ANALYSIS

The public policy of the APRA states that "(p)roviding persons with information is an essential function of a representative government and integral part of the routine duties of public officials and employees, whose duty it is to provide the information." Ind. Code § 5-14-3-1. Furthermore, "[t]his chapter shall be liberally construed to implement this policy and place the burden of proof for the nondisclosure of a public record on the public agency that would deny

access to the record and not on the person seeking to inspect and copy the record." Ind. Code § 5-14-3-1.

The Department's Response to the Access to Public Record's Request

Denial of Records Request

It is the responsibility of the public agency to respond to requests for access to public records within a specified time period. The APRA does not set any time periods for producing public records, merely for responding to the request. For requests that are delivered by mail or facsimile, a denial is deemed to have occurred if seven (7) days elapse after the agency receives the request and there has been no response. Ind. Code §5-14-3-9(b).

It appears from your complaint that the Department originally responded to your complaint within 7 days. In that response the Department provided a date upon which the document would be available to you. You have stated that subsequent to that letter, the Department denied the record to you, by placing it on "hold." Ms. Shell stated that you have since received the record. She did not provide the date upon which you were notified that the record would be made available, but it appears that you obtained a copy of the record approximately one to two weeks later and within one month of making the request.

The Department's notice to you that your request had been placed on hold, a hand-written note from the Clerk-Treasurer, did not provide to you any explanation as to the reason for the hold or a date upon which you could expect to receive the record. A statement that the record is on hold, with no further indication as to when the document could be expected, would appear to this office to be a constructive denial. An indefinite hold provides the requestor with no reasonable expectation of when, or whether, the record might be received. As such, it is my opinion that the Department violated APRA by placing your request on hold with no further explanation, consequently denying you the record sought.

Reasonableness of Production Time

It is also questionable as to whether the Department provided the document within a reasonable time frame. The burden for any nondisclosure generally lies with the public agency, not the person making the request under the APRA. IC 5-14-3-1. With respect to the time for production, it is my position that public agencies must produce public records within a reasonable time period given the nature of the request. The burden lies with the Department to show that the time period for producing the public records is reasonable.

On April 14, 2005 you were notified that your April 4, 2005 request was being placed on hold. The Department has stated that you received the record no later than April 28, 2005. The Department did not provide any information concerning the date upon which you were notified

that the record would be available. Additionally, the Department has not alleged any facts indicating any reason why this should have been a difficult record to obtain. The Department has admitted that the confusion regarding the copying costs delayed the request; however, it has not stated why it could not either provide the document free of charge, or why a decision regarding costs could not be made more quickly. It seems unreasonable that a recently created, one page document would take nearly a month to provide.

The Board's Denial of Records Request

For requests that are delivered in person, the agency must respond within 24 business hours. IC 5-14-3-9(a). During the April 14, 2005 Town Board meeting you requested to see the records. According to the minutes of that meeting, the Board President immediately denied your request to see the record that night. When you requested to have that in writing, he told you that you could see the incident report when "we find out the legal way to hand it out." The immediate response of the Board was in compliance with the requirement to respond within 24 business hours.

Any person may inspect and copy the public records of a public agency during the agency's regular business hours, unless a record is excepted from disclosure under section 4 of the APRA. IC 5-14-3-3(a). The Board's response that you could not look at the records that night was appropriate if it was outside the business hours of the agency which maintained the record.

However, once the President followed up by saying that you could see the report when they had determined a "legal way to hand it out," this response was similar to the Department's action of putting your request on "hold." The Board's vague answer to you was tantamount to denying the request.

CONCLUSION

For the foregoing reasons, I find that the Department and the Board failed to comply with the Access to Public Records Act by placing your request on "hold" and failing to provide you any concrete indication that the record would be provided, and when it would be provided.

Sincerely,

Karen Davis
Public Access Counselor

cc: Marshal Oliver
Ted Brown