



STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

PUBLIC ACCESS COUNSELOR
ANDREW J. KOSSACK

Indiana Government Center South
402 West Washington Street, Room W470
Indianapolis, Indiana 46204-2745
Telephone: (317)233-9435
Fax: (317)233-3091
1-800-228-6013
www.IN.gov/pac

April 25, 2011

Mr. Joseph L. Weingarten
14066 Deer Stone Lane
Fortville, IN 46060

Re: Formal Complaint 11-FC-105; Alleged Violation of the Access to Public Records Act by the Town of Fishers

Dear Mr. Weingarten:

This advisory opinion is in response to your formal complaint alleging the Town of Fishers ("Town") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* I note that I granted your request for priority status under 62 Ind. Admin. Code 1-1-3(3).

BACKGROUND

In your complaint, you allege that you requested records from the Town on April 7, 2011. Specifically, you requested (1) the employment agreement or contract for Gary Huff; (2) the settlement agreement between the Town and Mr. Huff approved by the Town Council on March 21, 2011; (3) any documents submitted by Mr. Huff concerning his resignation as the Town Manager; (4) and payments to a company during the past four years. On April 11, 2011, Town Manager Scott Fadness responded to your request and informed you that the Town would provide you with any responsive records on or before May 31, 2011. You argue, however, that his response "clearly shows action to delay and therefore represents a denial of records prior to a May election."

I spoke with Mr. Fadness this morning via telephone regarding your complaint. He claims that the Town responded to your request with the May 31st production date due to the fact that you have filed numerous other public records requests with the Town. The Town is currently endeavoring to answer each of those requests and does so in the order in which they are received. Mr. Fadness contacted the Town's attorney, Doug Church, who is endeavoring to prepare responsive records and send them to you by the end of this week.

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 does not contest that it is 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 Town’s public records during regular business hours unless the records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. I.C. § 5-14-3-3(a).

The issue here is whether the Town violated the APRA by failing to actually produce responsive records between the date of your request, April 7th, and the date of your complaint, April 18th, and by responding to you with an estimated production date of May 31st. The APRA provides no firm deadlines for the production of public records. The public access counselor has stated repeatedly that records must be produced within a reasonable period of time, based on the facts and circumstances. Considering factors such as 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 is necessary to determine whether the agency has produced records within a reasonable timeframe. The ultimate burden lies with the public agency to show the time period for producing documents is reasonable. *Opinion of the Public Access Counselor 02-FC-45*.

Here, Mr. Fadness cites to the fact that you have recently made several other public records requests with the Town that have also required the Town’s attention. I also note that it does not appear that you responded to Mr. Fadness’ April 11th response to inform him that the May 31st production date was unacceptable. It is difficult to find that the Town failed to act reasonably if the Town had no knowledge that its proposed production date was not acceptable. Nevertheless, Mr. Fadness states that the Town’s attorney will expedite this request and make available to you responsive records by the end of this week. Under such circumstances, it is my opinion that the Town has not acted unreasonably. Under the APRA, a public agency shall “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), meaning that the Town cannot cease all of its essential duties to respond to records requests. *See also Op. of the Public Access Counselor 09-FC-115* (two months was not an unreasonable production time where agency director and records request handler recently assumed the duties of another position and needed time to review and redact confidential information); *Op. of the Public Access Counselor 04-FC-81* (not unreasonable for agency to take two months to produce personnel records and policies where other staffing changes occurred at the agency and responding employee was new to the position); *see also Op. of the Public Access Counselor 07-FC-327* (34 days was not unreasonable amount of time to produce three-page document considering number of other pending requests).

CONCLUSION

For the foregoing reasons, it is my opinion that the Town has not violated the APRA if it makes responsive records available to you by the end of this week.

Best regards,

A handwritten signature in black ink that reads "Andrew J. Kossack". The signature is written in a cursive style with a large, sweeping initial "A".

Andrew J. Kossack
Public Access Counselor

cc: Scott Fadness