



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

July 7, 2011

Ms. Susan Snyder
13900 U.S. Hwy. 12
White Pigeon, MI 49099

Re: Formal Complaint 11-FC-144; Alleged Violation of the Access to Public Records Act by the Town of Yorktown

Dear Ms. Snyder:

This advisory opinion is in response to your formal complaint alleging the Town of Yorktown (the "Town") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* The Town's response to your complaint is enclosed for your reference.

BACKGROUND

In your complaint, you allege that the Town failed to respond to your May 17, 2011, records request. This complaint appears to involve a similar records request to that which you sent to the Delaware County Drainage Board, which I addressed in *Op. of the Public Access Counselor 11-FC-143*. In both that and the request at issue here, you sought access to various records related to the construction of a county storm drain. You claim that the Town failed to respond to your request as required by law and with "total silence which [sic] is the response I have received when attempt [sic] to resolve this informally."¹

In response to your complaint, the Town's attorney, Steven D. Murphy, states that the Town received your request on May 23rd. The same day, Beth Neff, the Town Treasurer, called you and left you a message stating that she was replying to your request. She asked you to return her call. On June 2nd, she called you again and left a similar

¹ On July 7th, my office received a letter from you stating that your Yorktown Municipal Utility bill increased from under \$12.00 to \$35.73 after you filed your formal complaint. The implication in your letter is that the increase was a result of your filing this formal complaint. While I appreciate that concern, I have no authority to address such an allegation. See I.C. § 5-14-4-10. If you feel that your bill was increased inappropriately, I would encourage you to contact the Indiana Office of Utility Consumer Counselor at 317-232-2494 for further assistance.

message. Mr. Murphy states that you “called back at some point, after 6:00 p.m. and left a message for Beth to call. Beth’s office closes at 4:30 p.m. each day, so it was difficult to make a connection” with you. Mr. Murphy further explains that the Town was attempting to reach you to advise you that it was in the process of accumulating the requested records, and that the applicable copy fee would be \$.10 per page, plus the actual cost to copy any poster-sized plans. After not having made phone contact with you, Pete Olson, the Town Manager, sent you a letter on June 9th, but he had not received a reply as of July 1st. The Town has accumulated the records responsive to your request and they are available for you to review at any time.

ANALYSIS

The public policy of the APRA states that “(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 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).

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 or facsimile and the agency does not respond to the request within seven (7) days of receipt, the request is deemed denied. I.C. § 5-14-3-9(b). If the request is delivered in person and the agency does not respond within 24 hours, the request is deemed denied. I.C. § 5-14-3-9(a). A response from the public agency could be an acknowledgement that the request has been received and information regarding how or when the agency intends to comply.

Here, it appears that the Town contacted you the same day it received your request to inform you that it was working to comply with your request. The Town attempted to contact you again via the telephone, but was not able to connect with you due to your calling back after hours. The APRA provides individuals with the right to “inspect and copy the public records of any public agency during the regular business hours of the agency,” I.C. § 5-14-3-3(a), but nothing in the APRA requires agencies to extend their regular business hours to accommodate a requester. If the Town called you twice and sent you a letter in an attempt to inform you that the Town was assembling your records and that they were available for inspection, the Town satisfied its response obligations under the APRA. Finally, I trust that the Town satisfied your complaint by making all responsive records available for you to inspect and/or copy as of June 9th.

CONCLUSION

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

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: Steven D. Murphy