



STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

PUBLIC ACCESS COUNSELOR
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July 28, 2011

Mr. Joseph L Weingarten
14066 Deer Stone Lane
Fishers, Indiana 46040

Re: Consolidated Formal Complaints 11-FC-159 and 11-FC-160; Alleged Violations of the Access to Public Records Act by the Town of Fishers

Dear Mr. Weingarten:

This advisory opinion is in response to your formal complaints alleging the Town of Fishers ("Town") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* The Town's attorney, Doug Church, responded on behalf of the Town. I have enclosed his response for your reference.

BACKGROUND

In Formal Complaint 11-159, you allege that you submitted a written request to the Town on June 16, 2011 to obtain a copy of the following public records: Mr. Gary Huff employment agreement/contract, Mutual Release and Settlement Agreement between the Town and Gary as approved on March 21, 2011, and any documents submitted by Mr. Gary Huff concerning resignation from his position as Town Manager. You provided that this was your second request for the information, the first request being made on April 7, 2011. As of July 1, 2011, the date you filed this complaint with the Public Access Counselor, you state you have not received a response in any form.

In Formal Complaint 11-160, you allege that you submitted a written request to the Town on June 16, 2011 to obtain a copy of the following records: Contracts for work or for any work product between the Town or Fishers or any office of the Town and Clifton Gunderson LLP, 9339 Priority Way West Ste 200, Indianapolis, IN 46240 and any payments made to this company during the past four years. You provided that this was your second request for the information. As of July 1, 2011, the date you filed this complaint with the Public Access Counselor, you state you have not received a response in any form.

In response to your formal complaint, Doug Church advised that you have been in contact with the Town pertaining to the Huff requests and was at a loss to understand why you would state the Town had not been responsive to your requests. Mr. Church

submitted copies of the Employment Agreement between the Town and Gary A. Huff and the Mutual Release and Settlement Agreement between the Town and Gary A. Huff that the Town alleges were provided to you on June 22, 2011, six days after receiving your request. Mr. Church also submitted copies regarding the Clifton Gunderson documents that you requested that the Town alleges were sent to you “some time ago by the Clerk Treasurer’s office.” I have enclosed copies of all of the documents submitted by the Town.

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).

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.

The public access counselor is not a finder of fact. Advisory opinions are issued based upon the facts presented. If the facts are in dispute, the public access counselor opines based on both potential outcomes. *See Opinion of the Public Access Counselor 11-FC-80*. In your complaint, you allege that the Town has not responded to your requests in any form. The Town alleges that you have been in contact with the Town in regards to your requests, has responded to your requests, and provided the requested documents within the requirements of the APRA.

Based on your version of the events, if the Town provided no written response within seven days of receiving your written request, under subsection 9(b) of the APRA, the request was by definition denied as of June 23, 2011. In regards to 11-FC-159, the Town has provided me copies of their response to you that is dated June 22, 2011, six days after you filed your request. In regard to 11-FC-160, Mr. Church advised that the Clifton Gunderson documents were provided to you “some time ago by the Clerk-Treasurer’s Office.” I have no record before me as to the date the Clifton Gunderson documents were sent to you from the Town’s Clerk-Treasurer’s Office. As you have stated, the Town did not respond to your requests in any form. Thus if the Town intended to grant your request pursuant to 11-FC-160, it simply needed to respond within

the APRA's timelines. That being said, I trust that the Town's responses that are enclosed are in satisfaction of your complaints.

CONCLUSION

For the foregoing reasons, it is my opinion that the Town did not violate the APRA in reference to 11-FC-159 under either factual scenario presented.

In regards to 11-FC-160, it is my opinion that the Town should have responded to your June 16, 2011 written request within seven (7) days. If the Town has now produced all responsive records, it has not otherwise violated the APRA.

Best regards,

A handwritten signature in black ink, appearing to read "J. Hoage". The signature is written in a cursive style with a large initial "J" and a long, sweeping underline.

Joseph B. Hoage
Public Access Counselor

cc: Doug Church, Town of Fishers