



STATE OF INDIANA

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May 19, 2014

Mr. Leslie E. Young
203 N. Washington St.
Wanatah, IN 46390

Re: Formal Complaint 14-FC-86; Alleged Violation of the Access to Public Records Act ("APRA") by the Town of Wanatah

Dear Mr. Young,

This advisory opinion is in response to your formal complaint alleging the Town of Wanatah ("Town") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et. seq.* The Town has responded via Mr. Alan J. Sirinek, Esq., Attorney for the Town. His response is enclosed for your review. Pursuant to Ind. Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on April 17, 2014.

BACKGROUND

On February 19, 2014 you made two public records requests to the Town of Wanatah. The first requested salary paid to the Town's public works superintendent and assistant superintendent and also a list of employees paid and the dollar amount for the Town's 2013 Scarecrow Festival. On March 28, 2014, the salary ordinance for 2013 and given the number of overtime hours of the two superintendents for the 2013 calendar year was made available to you. You inspected a copy on April 1, 2014. You take exception to this as you specifically asked for a breakdown of overtime pay.

Your second request was made on March 20, 2014 and denied on March 21, 2014 by the Town treasurer. You sought the names of 26 residents who you were told had estimates taken of their utility meters. The denial was made pursuant to Ind. Code § 5-14-3-4(b)(20). You state it was denied pursuant to the Federal Health Insurance Portability and Accountability Act ("HIPAA"), however, HIPAA was not indicated on any of the responses.

You also include a complaint about the enforcement, or lack thereof, of dog ordinances in the Town. This issue is outside the scope of the Office of the Public Access Counselor and will not be considered.

DISCUSSION

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.” See Ind. Code § 5-14-3-1. The Town of Wanatah is a public agency for the purposes of the APRA. See Ind. Code § 5-14-3-2(n)(1). Accordingly, any person has the right to inspect and copy the Town’s public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. See Ind. Code § 5-14- 3-3(a).

A request for records may be oral or written. See Ind. Code § 5-14-3-3(a); § 5-14-3-9(c). If the request is delivered in person and the agency does not respond within 24 hours, the request is deemed denied. See Ind. Code § 5-14-3-9(a). 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. See Ind. Code § 5-14-3-9(b). A response from the public agency could be an acknowledgement the request has been received and information regarding how or when the agency intends to comply.

It is unclear if the Town failed to acknowledge receipt of your request and was therefore denied seven (7) days after it was received. If it was, in fact, received by the Town and not acknowledged, a violation of the APRA would have occurred. This was not made part of your formal complaint and therefore will not be further addressed by this Opinion.

I am unable to discern the substantive issue of your complaint in regard to the salary report. It appears the Town satisfied your request and made an annotation as to the overtime worked by the superintendents. A public agency is only required to produce documentation responsive to an APRA request and not to explain the information contained therein.

The utility bill issue is more concerning. You requested the names of 26 Town residents whose utility bills were estimated. Your request seeks as follows:

I request the names of the 26 residents, other than me, I was told whose utility meter readings were estimated.

For this scenario, I am assuming the Town is aware of the situation you reference. There is no indication the Town feels this request is not reasonably particular. The Town argues the release of this information is discretionary based upon the exception found at Ind. Code § 5-14-3-4(b)(20). I disagree. The statute is clear the only personal information subject to withholding for a municipally owned utility is telephone number, home address, and social security numbers. Names are not exempted from that list.

CONCLUSION

I do not have sufficient information to conclude whether the utility you reference is municipally owned. If it is, you are entitled to the information you seek and it is the Opinion of the Public Access Counselor the Town of Wanatah has violated the Access to Public Records Act in regard to the utility information. They have not violated the APRA in regard to the payroll issue.

Regards,

A handwritten signature in black ink, appearing to read 'LHB', with a long, sweeping underline.

Luke H. Britt
Public Access Counselor

Cc: Mr. Alan J. Sirinek, Esq.