



# STATE OF INDIANA

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August 31, 2016

Mr. Ken Davidson  
7407 Montana Avenue  
Hammond, Indiana 46323

*Re: Formal Complaint 16-FC-172; Alleged Violation of the Access to Public Records Act by the Town of Munster*

Dear Mr. Davidson:

This advisory opinion is in response to your formal complaint alleging the Town of Munster ("Town") violated the Access to Public Records Act ("APRA"), Indiana Code § 5-14-3-1 et. seq. The Town has responded via Mr. David Westland, Esq. His response is enclosed for your review. Pursuant to Indiana Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on July 21, 2016.

## BACKGROUND

Your complaint dated July 17, 2016, alleges the Town of Munster violated the Access to Public Records Act by taking an unreasonable time to provide records.

On June 22, 2016, you submitted a request to view correspondence, purchase agreements, and sales disclosure forms relating to the purchase of real property by the Town from 2013-2015. You also requested to view all emails to or from Mr. Gregory Vitale from November 1, 2013 to January 1, 2014 and December 1, 2014 to January 30, 2015.

You received an acknowledgment of your requests from Mr. Shafer, the Clerk-Treasurer, within 24 hours. In this email, Mr. Shafer informed you he wished to consult his attorney before responding to your requests. He noted the earliest he could get back to you on the matter was July 5, 2016, as he would be out of the office.

No additional correspondence was received until July 27, 2016. On this date, you were notified there were records responsive to your request relating to property purchased by the Town on Manor Avenue. In an exchange of emails, you agreed to visit the Clerk-Treasurer's office on July 29, 2016.

In the Town's response to your formal complaint, the Clerk-Treasurer's office notes you did not appear for this meeting, but you may view the records at another meeting should you choose to do so in the future. The Town also notes your request for emails from Mr. Vitale from December 1, 2014 to January 30, 2015 containing the search terms, "Manor Drive, green space, West Lake, train, and South Shore" is currently being processed. The Town anticipates these records will be available during the week of August 8, 2016.

### 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." *See Indiana Code § 5-14-3-1*. The State of Indiana, State Board of Education is a public agency for the purposes of the APRA. *See Indiana Code § 5-14-3-2(n)(1)*. Accordingly, any person has the right to inspect and copy the Board's disclosable public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. *See Indiana Code § 5-14-3-3(a)*.

The APRA does not specify a time for production or inspection of responsive records. Instead, it states a request for public records must be fulfilled by a public agency within a reasonable time. *See Indiana Code § 5-14-3-3(b)*. Reasonableness depends on the circumstances, including: size of the public agency, number of pending requests, complexity of the request, and any other operational consideration which may reasonably affect the public records process. This includes requesting guidance from legal counsel on how to respond to your request.

Communication is key to ensuring a request is successfully processed. There seems to have been some breakdown in communication between the involved parties with regard to this issue. While there does not appear to be any bad faith in the length of time it took to process your request, it is always best practice for an agency to keep the requesting party apprised of the status of their complaint to provide some relief of mind the request has not been forgotten or lost. I would also note it is best to directly contact the agency for a status update if a response has not been received by an anticipated date.

Based upon the Town's response, it appears your request has been completed. It is my hope all of the records you requested have been made available to you for your review.

Regards,



Luke H. Britt  
Public Access Counselor

Cc: Mr. David Westland, Esq.