



STATE OF INDIANA

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May 20, 2009

Nancy Garbrecht
6170 Joliet Road, Suite 200
Countryside, Illinois 60525

Re: Formal Complaint 09-FC-113; Alleged Violation of the Access to Public Records Act by the Town of Demotte

Dear Ms. Garbrecht:

This advisory opinion is in response to your formal complaint alleging the Town of Demotte ("Town") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by failing to respond to your request for access to records. A copy of the Town's response to the complaint is enclosed for your reference. It is my opinion the Town's response was untimely under the APRA but the Town did not otherwise violate the APRA.

BACKGROUND

You allege that you sent by facsimile transmission to the Town a request for access to records. The request was dated April 14, 2009. You filed the present complaint on May 1, alleging you had received no response from the Town. You requested priority status for the complaint but did not allege any of the reasons provided in 62 IAC 1-1-3 for priority status, so priority status was not granted.

The Town responded to the complaint by letter dated May 12 from attorney Emily Waddle. The Town contends that on May 12 it sent to you a response to your request for access to records. The Town contends that with the May 12 letter it provided you copies of the records you have requested. Ms. Waddle contends the Town did not deny you the requested records. Ms. Waddle explains that the Town Manager directed the request to her office for review and that it took some time to organize and compile the requested records.

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 is clearly a public agency for the purposes of the APRA. I.C. § 5-14-3-2(m). Accordingly, any person has the right to inspect and copy the public records of the Town during regular business hours unless the public 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 transmission and the agency does not respond to the request within seven days of receipt, the request is deemed denied. I.C. § 5-14-3-9(b).

A response could be an acknowledgement that the request has been received and information regarding how or when the agency intends to comply. There are no prescribed timeframes when the records must be produced by a public agency. A public agency is required to 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). However, section 7 does not operate to deny to any person the rights secured by section 3 of the Access to Public Records Act. I.C. § 5-14-3-7(c). Former public access counselors and I have stated that records must be produced within a reasonable period of time, based on the facts and circumstances.

Here, you sent the request to the Town on April 14. If the Town received the request on April 14 but did not respond to you until the May 12 letter, the response was not sent within seven days of receipt of the request and as such was untimely under the APRA. *See* I.C. § 5-14-3-9(b). The Town now indicates it has provided you copies of the requested records. So long as the Town has provided you copies of any records it maintains which are responsive to the request or has asserted appropriate exceptions to disclosure, the Town has not otherwise violated the APRA.

CONCLUSION

For the foregoing reasons, it is my opinion the Town's response was untimely under the APRA but the Town did not otherwise violate the APRA.

Best regards,



Heather Willis Neal
Public Access Counselor

Cc: Emily Waddle, Kallenbach, Burkhart & Waddle
John Dyke, Town of Demotte