



STATE OF INDIANA

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January 6, 2009

John Powers
8509 White Oak
Munster, Indiana 46321

Re: Formal Complaint 09-FC-15; Alleged Violation of the Access to Public Records Act and the Open Door Law by the White County Area Plan Commission

Dear Mr. Powers:

This advisory opinion is in response to your formal complaint alleging the White County Area Plan Commission ("Commission") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by denying you access to records and violated the Open Door Law ("ODL") (Ind. Code 5-14-1.5) by conducting secret meetings. In my opinion the Commission should provide you access to the requested records upon receipt of payment of copy fees, so long as the records are not excepted from disclosure. Further, it is my opinion you have not provided enough information to support your claim that the Commission has conducted secret meetings.

BACKGROUND

You filed the present complaint on December 31, 2008. You allege that you have requested from the Commission copies of a number of records and the Commission indicated you would receive the records in three to five weeks. You allege this is a violation of the APRA. Further, you allege the Commission conducted secret meetings to distribute packets of information before the December 9 hearing. You contend that the Commission members seemed familiar with the documents and as such must have met prior to the December 9 meeting.

You requested priority status for the complaint, alleging that you need the requested records for a proceeding before another public agency. Because this is a reason for priority status provided in 62 IAC 1-1-3, priority status has been granted.

My office sent a copy of the complaint to the Commission and invited the Commission to respond. To date my office has not received a response from the Commission.

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 Commission 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 Commission 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 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). If the request is made in person and the agency does not respond within twenty-four hours, the request is deemed denied. I.C. § 5-14-3-9(a).

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). This office has stated that records must be produced within a reasonable period of time, based on the facts and circumstances. Consideration of the nature of the requests (whether they are broad or narrow), how old the records are, and whether the records must be reviewed and edited to delete nondisclosable material are necessary to determine whether the agency has produced records within a reasonable timeframe.

Here, you allege the Commission has denied you access by indicating the records would be provided within three to five weeks. Because I have not heard from the Commission, I cannot determine whether that timeframe is reasonable given the circumstances. If the records are not excepted from disclosure under the APRA, the Commission should provide you access to those records within a reasonable period of time.

Subsequent to your complaint, you provided my office with a copy of a response to your request. The letter, sent by Diann Weaver of the Commission, indicated the Commission would provide you access to all records you requested at a fee of \$1.00 per page. The APRA does allow an agency to charge a copy fee. The APRA provides that the fiscal body, or governing body if there is no fiscal body, of a public agency shall establish a fee schedule for the certification or copying of documents. The fee for copying documents may not exceed the greater of ten cents per page for non-color copies or the actual cost to the agency of copying the document. I.C. § 5-14-3-8(d). A public

agency may require that the payment for copying costs be made in advance. I.C. § 5-14-3-8(e).

It is my opinion that absent a separate statute fixing the fee based on the records or the agency which maintains the records, the \$1.00 fee the Commission indicates it will charge exceeds the amount allowed by the APRA. Unless a separate statute allows the \$1.00 fee, the Commission should charge you no more than \$.10 per page for black and white copies.

Regarding your ODL complaint, it is the intent of the ODL that the official action of public agencies be conducted and taken openly, unless otherwise expressly provided by statute, in order that the people may be fully informed. I.C. § 5-14-1.5-1. Except as provided in section 6.1 of the Open Door Law, all meetings of the governing bodies of public agencies must be open at all times for the purpose of permitting members of the public to observe and record them. I.C. § 5-14-1.5-3(a).

Aside from the serial meeting provision (I.C. § 5-14-1.5-3.1), which is not implicated here, nothing in the ODL prohibits members of the governing body, employees of the public agency, or contracted attorneys from communicating by electronic mail, snail mail, or telephone outside of public meetings. The ODL addresses meetings, or gatherings of members of a governing body for the purpose of taking official action on public business. *See* I.C. § 5-14-1.5-2. If the Commission received packets in advance of the meeting, this was not a violation of the ODL. Further, if individual members spoke to one another or to the Commission attorney outside of a meeting but did not conduct a serial meeting as outlined in I.C. § 5-14-1.5-3.1, the Commission did not violate the ODL. An allegation that the Commission seemed to be familiar with the documents with which it was presented is not enough information to demonstrate secret meetings were conducted. As such, I cannot find the Commission violated the ODL.

CONCLUSION

For the foregoing reasons, it is my opinion the Commission should provide you access to the requested records upon receipt of payment of copy fees, so long as the records are not excepted from disclosure. Further, it is my opinion you have not provided enough information to support your claim that the Commission has conducted secret meetings.

Best regards,



Heather Willis Neal
Public Access Counselor

Cc: Diann Weaver, White County Area Plan Commission