



STATE OF INDIANA

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April 6, 2009

Gary Snyder
5101 West 1000 North
Huntington, Indiana 46750

Re: Formal Complaint 09-FC-76; Alleged Violation of the Access to Public Records Act by the Town of Andrews

Dear Mr. Snyder:

This advisory opinion is in response to your formal complaint alleging the Town of Andrews ("Town") violated the Access to Public Records Act ("APRA") (Ind. Code §5-14-3) by not producing the records you requested in a reasonable period of time. A copy of the Town's response to the complaint is enclosed for your reference. It is my opinion the Town has not violated the APRA.

BACKGROUND

You filed a complaint with this office dated March 10, 2009. You allege that on January 23, 2009 you requested from the Town access to a number of public records. On January 31 you received a response from the Town wherein the Town indicated you would be sent copies of the records upon receipt of the \$19.00 copying fee. You allege you remitted the copy fee on February 3. You filed the present complaint on March 10, alleging you had not yet received the copies. You contend this is an unreasonable amount of time for production of the records.

The Town responded to your complaint by undated letter my office received on March 20. The Town indicated the records were sent to you on the same day the response letter was sent to my office. The Town contends the delay was "the result of priority issues, City and Town annual Report, Annual Indebtedness Report, the Indiana Bond Bank Annual Report and other responsibilities. . ." Further, the Town contends it has only one full time employee and one part time employee.

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 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). Section 7 does not, however, operate to deny to any person the rights secured by section 3 of the APRA. I.C. § 5-14-3-7(c). My predecessors and I have opined 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.

The burden lies with the public agency to show the time period for producing documents is reasonable. *Opinion of the Public Access Counselor 02-FC-45*.

Here, your initial request was made on January 23, 2009. Assuming the Town's response was mailed by January 30 (and it must have been since you received it on January 31), the Town's response was timely. The time between your remittance of payment for copy fees and the Town's production of records was five weeks. The Town contends a number of priority issues faced the Town during the intervening time. Further, the Town contends that it has a very small staff to handle all of those issues.

It is my opinion the Town has demonstrated it worked to produce the documents you requested in a reasonable amount of time. The Town did not provide an indication to me of the number of documents reviewed and provided pursuant to the request, but I would expect nineteen months of billing statements would take some time to gather and copy. Further, the Town needed to review the records to redact nondisclosable information. And pursuant to the APRA, the Town must, when producing records pursuant to a request, 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).

I do not believe the Town took an unreasonable amount of time to collect, review and reproduce the records. My opinion is based in part, though, on the volume of records. My

opinion would certainly change if the number of records requested were small and the records were easy to locate, review and reproduce.

I would offer, though, that this office has often suggested a public agency make portions of a response available from time to time when a large number of documents is being reviewed for disclosure. See *Opinion of the Public Access Counselor 06-FC-184* and *Office of the Public Access Counselor Informal Inquiry Response May 10, 2006*. This further displays the effort the agency is making to provide transparency in government and provide access to public records. Sometimes this is not feasible based on the way the agency is processing the request, but I would encourage the Town to consider the suggestion in the future.

CONCLUSION

For the foregoing reasons, it is my opinion the Town of Andrews has not violated the APRA.

Best regards,



Heather Willis Neal
Public Access Counselor

Cc: William Johnson, Town of Andrews