



STATE OF INDIANA

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September 19, 2008

Dan and Karen Hoagland
1114 Lake Drive, Clear Lake
Fremont, Indiana 46737

Re: *Informal Inquiry 08-INF-36 regarding the Clear Lake Town Clerk and
Zoning Inspector*

Dear Mr. and Mrs. Hoagland:

This opinion is in response to your informal inquiry dated September 3, 2008. You write to inquire about records you have requested from the Town of Clear Lake Clerk and Zoning Inspector (hereinafter collectively referred to as "Town") pursuant to the Access to Public Records Act ("APRA") (Ind. Code 5-14-3). Pursuant to I.C. § 5-14-4-10(5), I issue the following opinion in response to your inquiry.

BACKGROUND

You initially sent a formal complaint, which this office received on August 26, 2008, alleging the Town denied you access to records. The complaint was returned to you because it was unclear whether you had accepted the Town's offer to meet to discuss the records. You returned the complaint on September 3 with an explanation of the efforts you have made to attempt to access the records. We converted the complaint to an informal inquiry because the complaint was untimely under I.C. § 5-14-5-7.

You allege that you have been requesting records from the Town since November 2007. Your complaint refers to a May 8, 2008 letter regarding the request. The letter was sent by attorney Neal Blythe on behalf of the Town. Your complaint related to two of the items to which the letter refers, photographs taken by Bruce Snyder and records related to an October 15, 2007 meeting. You allege that while the May 8 letter contains an indication those records would be sent to you within seven days of the letter, you still have not received the records.

My office sent a copy of your informal complaint to the Clerk and Zoning Inspector and invited them to provide a response to the informal complaint. To date, this office has received no response.

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).

Here, you first made your request on November 9, 2007. Neither the photographs nor records relating to the October 15, 2007 meeting were made available for inspection at that time or any time since then.

While the APRA requires a response within a specific timeframe, the same is not true for production of the requested records. 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). The public access counselor 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, I do not have the benefit of a response to the complaint from the Town, so I do not know the reason(s) the Clerk has yet to provide you access to the records. But it is difficult for me to imagine a reason for the Town to fail to disclose the records for ten months. Absent further information from the Town explaining the delay in providing access to the records, it is my opinion the Town has taken an unreasonable amount of time to produce the requested records and as such has denied you access to the records.

CONCLUSION

For the foregoing reasons, it is my opinion the Town has violated the APRA.

Best regards,



Heather Willis Neal
Public Access Counselor

Cc: Clear Lake Town Clerk Ginny Nye
Clear Lake Zoning Inspector Bruce Snyder