

December 11, 2007

Thomas J. Ritz
3094 Seeley Road
West Harrison, Indiana 47060

*Re: Informal Inquiry regarding Alleged Violation of the Access to Public Records Act
by the Franklin County Area Planning, Zoning and Building Department*

Dear Mr. Ritz:

This opinion is in response to your informal inquiry regarding a request for access to records you submitted to the Franklin County Area Planning, Zoning and Building Department (“Department”). I apologize for the delay in the response. Upon my appointment by Governor Daniels effective July 1 of this year, I found a backlog of informal inquiries. I am currently endeavoring to address those inquiries and issue an opinion in each matter pursuant to Indiana Code §5-14-4-10(5).

BACKGROUND

You originally filed a formal complaint with this office on May 16, 2007. In your complaint you stated you requested information about the consulting firms which were sent a request for proposal from the Franklin County Area Plan Office. According to Larry Franzman, Executive Director, he sent 22 proposal letters. You requested the name of all 22 consulting firms. From the documentation you supplied, it appears the Department gave you a list of names of consulting firms. You indicate your doubt that the list provided to you is the authentic list that is required to be created under Indiana Code §5-22-9-5. In correspondence with Mr. Franzman, you told him a “generic consulting firm list, guesswork, or depending on your memory is unacceptable. Please send me the authentic, complete, and accurate list contained in the official area plan files per Indiana law.”

Mr. Franzman supplied the enclosed list, which is the list he provided to you at the time of your request. The heading of the list is “Planning Consultants.” The list contains twenty-four names. Handwritten at the bottom of the first page of the two page document are the words “This is the List of Firms sent to Bid.” You have challenged Mr. Franzman because he had

reported that 22 requests for proposals had been sent. Mr. Franzman contends there is nothing misleading about the list he supplied you and indicated there is no list of 22 names in the contract file.

Former Public Access Counselor Karen Davis responded to your complaint on June 15, 2007. She recommended "the Department determine what firms were mailed proposals and either compile a new list, or using the list you were given, remove the two firms who were not sent the proposal."

In a letter dated June 19, 2007, Mr. Franzman indicated that 24 consulting firms were sent requests for proposals via first class mail. As to how many firms were sent the qualification sheet, he cannot confirm whether it was 22 or 24.

Mr. Franzman responded to this informal inquiry, indicating you have been provided with all requested documents and given access to files for your own research. The document you are requesting with the 22 names does not exist. Only the list with 24 names exists. Mr. Franzman indicates that he will not falsify a new list for something that happened years ago.

ANALYSIS

The public policy of the Access to Public Records Act ("APRA")(Ind. Code 5-14-3) 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." Ind. Code §5-14-3-1. The Department is clearly a public agency for the purposes of the APRA. I.C. §5-14-3-2. Accordingly, any person has the right to inspect and copy the public records of the Department 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).

Generally, a public agency is not required to compile a list of names and addresses, unless the public agency is required to publish such lists and disseminate them to the public under a statute. *See* I.C. §5-14-3-3(f).

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.

You have asserted that the list you requested is related to a request for proposals, and Mr. Franzman has not disputed the basis for your claim. Pursuant to I.C. §5-22-9-5, a public agency

is required to prepare a register of proposals to be open for public inspection after contract award. I.C. §5-22-9-5(a). The register of proposals must contain, among other things, a list of all persons to whom copies of the request for proposals were given. I.C. §5-22-9-5(b).

Mr. Franzman believes the Department submitted proposals to 24 firms and recorded those firms in the list provided to you. It appears the list Mr. Franzman originally gave you is the accurate list. Also, it appears his comment that only 22 firms received the proposals was made in error.

Because the list you are requesting does not exist, Mr. Franzman is not required to provide you with a copy. The APRA does not require a public agency to create a new record where one does not exist. Instead the APRA requires a public agency to provide access to records that already exist. Mr. Franzman has provided you with the record responsive to the request and maintained by the office and is not required to create a new list for the purposes of the APRA.

CONCLUSION

For the foregoing reasons, it is my opinion the Franklin County Area Planning, Zoning and Building Department has provided you with the correct list and is not required to create a new list for the purposes of the APRA.

Best regards,



Heather Willis Neal
Public Access Counselor

cc: Larry Franzman, Franklin County Area Planning, Zoning and Building Department