

September 21, 2004

Donald E. Mullendore
118 Church Street
P.O. Box 195
Gosport, IN 47433

Re: Formal Complaint 04-FC-152; Alleged Violation of the Access to Public Records Act by the Town of Gosport Clerk Treasurer

Dear Mr. Mullendore:

This is in response to your formal complaint alleging that the Town of Gosport Clerk Treasurer violated the Access to Public Records Act by denying you access to records. Specifically you requested a copy of a statement that had been read into the record of the meeting of the Gosport Town Council. I find that the Gosport Clerk Treasurer denied you the record in violation of the Access to Public Records Act.

BACKGROUND

Following a meeting of the Gosport Town Council on August 23, 2004, you requested in writing a copy of a statement that had been read at the meeting by the Town Council President Tammy Rogers. You allege that you were denied access because the statement and minutes from the meeting reflecting that statement would not be available until after they were approved at the next scheduled meeting of the Town Council. Your complaint followed. You also enclosed a copy of your written request for the statement, bearing a handwritten note signed by Clerk Treasurer Jodi Hester advising you that the statement would be released upon the minutes being approved at the next scheduled meeting.

I sent a copy of your complaint to Ms. Hester for a response. Her response is enclosed for your reference. In her response, Ms. Hester states that she did not have a copy of the statement at the time you requested it but would have had to obtain it from Ms. Rogers. Ms. Hester also assured me that she has mailed a copy of the statement to you, having received it from Ms. Rogers. Ms. Hester also stated over the telephone that she had told you that she had an audiotape of the meeting that contained the statement, but you did not make a request for that.

She also stated that she had believed that she did not have to produce the minutes of a meeting until the council had approved the minutes.

ANALYSIS

Any person may inspect and copy the public records of a public agency during the regular business hours of the agency. IC 5-14-3-3(a). A public record includes an audiotape or any written material created or retained by the agency. IC 5-14-3-2. A public agency that receives a written request for records must respond in writing, stating its basis for denying a record if it intends to so deny. In this case, although Ms. Hester offers a justification in her response for delay in getting you a copy of the statement that you sought, it is apparent from her written response to your request that she was denying the record you sought on the basis that it would only be available once the minutes were approved at the next scheduled meeting. As this office has stated many times, memoranda or minutes from a meeting are public records subject to disclosure in spite of being subject to approval at the next meeting of the governing body. In this situation, the Town could have responded in writing without running afoul of the APRA by offering to make a copy of the audiotape from the meeting, or granting access to a copy of the written statement that Town Council President Rogers had read, producing it once it was procured from Ms. Rogers. In any event, Ms. Hester assures me that she is now aware that minutes or memoranda are to be disclosed even in draft form.

CONCLUSION

For the foregoing reasons, I find that the Town of Gosport Clerk Treasurer violated the Access to Public Records Act when she denied a portion of the minutes of the meeting because the Town Council had not yet met to approve them.

Sincerely,

Karen Davis
Public Access Counselor

cc: Ms. Jodi Hester