



# STATE OF INDIANA

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September 22, 2008

Rita Hill  
9523 Shelby Lane  
Crown Point, Indiana 46307

*Re: Formal Complaint 08-FC-209; Alleged Violation of the Access to Public Records Act by the Town of Merrillville Planning and Building Department and Engineering Department*

Dear Ms. Hill:

This advisory opinion is in response to your formal complaint alleging the Town of Merrillville Planning and Building Department and Engineering Department (hereinafter collectively referred to as the "Town") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by denying you access to records. A copy of the Town's response to the complaint is enclosed. In my opinion the Town has violated the APRA.

## BACKGROUND

You filed the present complaint on September 15, 2008, alleging the Town denied you access to records. You allege that you submitted a request for access to records related to the Auburn Hills subdivision. You appeared at the office on July 25, 2008 to submit the request. Receiving no response, you returned to the office on August 20 to inquire about the status of the request. You allege the Zoning Director indicated she did not have the documents you requested and escorted you to the Engineering Department to speak with the Town Engineer. You allege the Town Engineer indicated he was busy and did not have time to work on the request but that if you paid him his \$135 hourly rate, he would "see what he could do."

The Town responded to your complaint by letter dated September 15 from Attorney Stephen Bower. The Town indicates that the Town Engineer had been sent the request but was not aware of the need to respond in a prompt manner. The Town contends it does not always understand which records are being sought in a request, which it contends is the case here. The Town indicates it recognizes its obligation to produce documents but contends it is difficult to identify which documents you have requested. The Town asks for advice regarding what procedures the Town should utilize in providing

access to records, contending that the Town has experienced problems in the past when individuals have been allowed to inspect records while unsupervised.

## 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 person may inspect and copy the records of a public agency during the regular business hours of the agency. The request for inspection and copying must identify with reasonable particularity the record being requested. I.C. § 5-14-3-3(a). An agency should respond to the request within twenty-four hours when the request is made in person and within seven days if the request is received by mail or facsimile transmission. *See* I.C. § 5-14-3-9.

Here, you originally submitted your request on July 25. I see no evidence suggesting the Town responded to your request. The response may be an acknowledgement of receipt of the request and an indication of how or when the agency intends to comply (*See Opinion of the Public Access Counselor 08-FC-193*). There is no specific timeframe set forth in the APRA for production of records, but this office has said records must be produced in a reasonable amount of time considering the facts and circumstances. *Id.* In the present matter, the Town neither responded to your request nor produced the records. Further, the Town has not provided any compelling facts or circumstances explaining why the records have not been produced nearly two months after receiving your July 25 request. The response you allege you received from the Town Engineer is, in my opinion, neither appropriate nor sufficient under the APRA. As such, it is my opinion the Town has violated the APRA by neither responding to your request nor providing you access to records.

The APRA requires a request to identify with reasonable particularity the record being requested. I.C. § 5-14-3-3(a). To the extent the Town cannot ascertain which records you seek from the information provided in your request, it is my opinion the request does not identify the records with reasonable particularity. The appropriate response from the agency would be to contact you and indicate it cannot determine which records you seek and ask you for further clarification. By communicating with one another, you may be able to determine which records the Town maintains which are records you would like to inspect, and the Town will be able to ascertain whether those records are disclosable and when the Town might be able to allow inspection and/or copying of those records.

Regarding the Town's request for advice about procedures for inspection, the APRA provides that the Town must allow inspection and copying of records. This means if a person wishes to inspect records without receiving and paying for copies, the Town must allow inspection of the records, provided the requested records are disclosable. At the same time, the Town is required to protect public records from loss, mutilation or destruction. *See* I.C. § 5-14-3-7(a). To accomplish these two requirements, the Town may wish to provide supervision of inspection or confine inspection to certain areas of the Town offices where a Town employee can monitor inspection of records. I would also advise the Town to read my office's *Handbook on Indiana's Public Access Laws*, available at [http://www.in.gov/pac/files/pac\\_handbook.pdf](http://www.in.gov/pac/files/pac_handbook.pdf), for answers to frequently asked questions about the APRA and other access issues.

#### CONCLUSION

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

Best regards,



Heather Willis Neal  
Public Access Counselor

Cc: Stephen Bower, Town of Merrillville