

January 30, 2008

Richard Lau
95 North Tennessee Street
Danville, Indiana 46123

Re: Formal Complaint 08-FC-20; Alleged Violation of the Access to Public Records Act by the Town of Plainfield

Dear Mr. Lau:

This is in response to your formal complaint alleging the Town of Plainfield ("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 your complaint is enclosed for your reference. It is my opinion the Town has not violated the APRA.

BACKGROUND

In your complaint you allege that you submitted a request for copies of records to the Town on December 3, 2007. The Town Manager, Richard Carlucci, responded to your request on December 5, indicating that some of the records may be excepted from disclosure pursuant to the APRA. Mr. Carlucci indicated it would take approximately thirty days to provide you with the records. You allege this constitutes an inappropriate denial of access. You filed this complaint on December 31.

Mr. Carlucci responded to your complaint by letter dated January 16, 2008. Mr. Carlucci indicates that the Town provided you with a portion of the records responsive to your request on December 31 and the remainder of the records on January 3. Mr. Carlucci contends thirty days was a reasonable period of time for production, considering the Town had to review each record to determine whether each contained information excepted from disclosure and considering the request came at the end of the year during the holiday season.

ANALYSIS

The public policy of the APRA states that "(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. 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).

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, Mr. Carlucci indicates the requested records, with the exception of the ordinance requested, required review to determine whether any information contained therein was excepted from disclosure under the APRA. Given the need for review of the records, it is my opinion thirty days is not an unreasonable amount of time to review and produce the records.

You further inquire whether the Town should have immediately provided the one record which did not require review. It is my opinion the Town could provide all records responsive to the request at the same time or could provide the records in portions as they became available. As such, the Town did not violate the APRA by providing the ordinance 28 days after request and the remainder of the records a few days later.

CONCLUSION

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

Best regards,



Heather Willis Neal
Public Access Counselor

cc: Richard Carlucci, Plainfield Town Manager