

March 12, 2008

Nancy Garbrecht  
Indiana, Illinois, Iowa Foundation for Fair Contracting  
6170 Joliet Road, Suite 200  
Countryside, Illinois 60525

*Re: Formal Complaint 08-FC-61; Alleged Violation of the Access to Public Records Act by the Town of Hamlet Clerk-Treasurer*

Dear Ms. Garbrecht:

This advisory opinion is in response to a formal complaint filed by you alleging the Town of Hamlet Clerk-Treasurer ("Clerk") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by failing to respond to your request for records. A copy of the Clerk's response to your complaint is enclosed for your reference. It is my opinion the Clerk's response was untimely under the APRA.

#### BACKGROUND

You allege you submitted to the Clerk a request for copies of records by letter dated February 1, 2008 and sent via facsimile transmission. Receiving no response, you filed this complaint on February 20.

The Clerk responded to the complaint by letter dated February 25. The Clerk indicates that she has "no information to report" at this time. She further indicates that as soon as the information becomes available she will inform you.

#### 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 Clerk's office 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 Clerk's office

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, the agency must respond to the request within seven days of receipt. I.C. § 5-14-3-9(b).

Here, the Clerk received your request on February 1 and did not respond until you filed a complaint with this office. Regardless of whether records exist responsive to the request, the Clerk is still obligated to respond to requests within seven days of receipt, when such requests are received by mail. I.C. § 5-14-3-9(b). As such, the Clerk's response was untimely under the APRA.

Regarding the Clerk's indication that she will inform you when information becomes available, that should be done in a reasonable amount of time. While a response is required within seven days, 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).

Past public access counselors have 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. I urge the Clerk to consider what is a reasonable amount of time to produce the requested records and to provide you with any responsive records as soon as is reasonable and practical.

#### CONCLUSION

For the foregoing reasons, it is my opinion the Town of Hamlet Clerk-Treasurer violated the Access to Public Records Act by failing to timely respond to your request.

Best regards,



Heather Willis Neal  
Public Access Counselor

cc: Neva Bailey, Town of Hamlet Clerk-Treasurer