



STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

PUBLIC ACCESS COUNSELOR
HEATHER NEAL

Indiana Government Center South
402 West Washington Street, Room W460
Indianapolis, Indiana 46204-2745
Telephone: (317)233-9435
Fax: (317)233-3091
1-800-228-6013
www.IN.gov/pac

June 9, 2008

John Davis
204 North Lafayette Street
Cloverdale, Indiana 46120

Re: Formal Complaint 08-FC-130; Alleged Violation of the Access to Public Records Act by the Town of Cloverdale

Dear Mr. Davis:

This advisory opinion is in response to your formal complaint alleging the Town of Cloverdale ("Town") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by denying you access to records. I have enclosed a copy of the Town's response to the complaint for your reference. It is my opinion the Town has violated the APRA by not responding to your request and should provide copies of any responsive records or provide the statutory authority excepting the records from disclosure.

BACKGROUND

In your complaint you allege you appeared at the office of the Clerk-Treasurer on April 24, 2008. You allege you submitted two requests for access to records, requesting a copy of a list of potential reserve officers as well as "a copy of the results of the ISO review of the fire department sent to the town." You filed this complaint on May 16, 2008, alleging you had received neither a response nor copies of the requested records.

The Town responded to the complaint by letter dated June 3 from Don Sublett, President of the Town Council. Mr. Sublett opens the letter by providing what appears to be a timeline of requests you submitted to the Town. Only one of those, though, is the subject of this complaint. Regarding the list of reserve officers, Mr. Sublett indicates a list of reserve officers is currently being prepared and will be provided to you as soon as possible. Mr. Sublett does not address the request for the ISO review.

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. As such, 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 in person and the agency does not respond to the request within twenty-four hours of receipt, the request is deemed denied. I.C. § 5-14-3-9(a).

Here you allege you appeared in person at the Clerk-Treasurer's office and submitted two requests for access to records. You allege, and the Town does not dispute, that you did not receive a response. If the Town did not respond to the request within twenty-four hours of receipt of the request, the Town violated the APRA. See I.C. § 5-14-3-9(a).

Regarding the ISO review document, the Town does not address this in its response to the complaint. The Town is required to provide you access to inspect and copy this record unless it is otherwise excepted from disclosure. I.C. § 5-14-3-3. I do not have enough information regarding the document to indicate whether it is excepted from disclosure, but the Town would bear the burden of proof to sustain any denial of access. I.C. § 5-14-3-1.

Regarding the list of reserve officers, nothing in the APRA requires a public agency to *develop* records or information pursuant to a request. The APRA requires the public agency to *provide access* to records already created. To the extent the list already exists, again the Town is required to provide you access to inspect and copy this record unless it is otherwise excepted from disclosure. I.C. § 5-14-3-3. And again, the Town would bear the burden of proof to sustain any denial of access. I.C. § 5-14-3-1.

CONCLUSION

For the foregoing reasons, it is my opinion the Town has violated the APRA by not responding to your request and should provide copies of any responsive records or provide the statutory authority excepting the records from disclosure.

Best regards,



Heather Willis Neal
Public Access Counselor

Cc: Don Sublett, Town of Cloverdale