



# STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

PUBLIC ACCESS COUNSELOR  
JOSEPH B. HOAGE

Indiana Government Center South  
402 West Washington Street, Room W470  
Indianapolis, Indiana 46204-2745  
Telephone: (317)233-9435  
Fax: (317)233-3091  
1-800-228-6013  
www.IN.gov/pac

November 10, 2011

Dorothy M. Snyder  
236 E. Pendle Street  
South Bend, Indiana 46637

*Re: Formal Complaint 11-FC-269; Alleged Violation of the Access to Public Records Act by the Town of Roseland*

Dear Ms. Snyder:

This advisory opinion is in response to your formal complaint alleging the Town of Roseland ("Town") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Peter Agostino, Attorney, responded on behalf of the Town. His response is enclosed for your reference.

## BACKGROUND

In your complaint, you allege that on October 7, 2011, you faxed to the Town's Clerk-Treasurer a request for copies of "four months of cell phone bills and claims, which are being paid by the Town and used by Elizabeth McCombs." On October 7, 2011, Robin Ackerson, Clerk-Treasurer, responded to your request and provided that you would be notified when the records would be made available. You believe that the Clerk-Treasurer's response constituted a denial under the APRA.

In response to your formal complaint, Mr. Agostino advised all records responsive to your request have been provided. The response that you allege to be a denial to your request was simply an acknowledgment that the records request had been received and you would be notified when they were ready to be picked up.

## 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." *See* I.C. § 5-14-3-1. The Town is a public agency for the purposes of the APRA. *See* I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy the Town's public

records during regular business hours unless the records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. *See* I.C. § 5-14-3-3(a).

A request for records may be oral or written. *See* 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 within 24 hours, the request is deemed denied. *See* I.C. § 5-14-3-9(a). If the request is delivered by mail or facsimile and the agency does not respond to the request within seven (7) days of receipt, the request is deemed denied. *See* I.C. § 5-14-3-9(b). Under the APRA, when a request is made in writing and the agency denies the request, the agency must deny the request in writing and include a statement of the specific exemption or exemptions authorizing the withholding of all or part of the record and the name and title or position of the person responsible for the denial. *See* I.C. § 5-14-3-9(c). A response from the public agency could be an acknowledgement that the request has been received and information regarding how or when the agency intends to comply. Here, the Town responded to your request within the timelines proscribed by the APRA.

Nothing in the APRA indicates that an agency's failure to provide a requester with "instant access" to requested records constitutes a denial of access. *See Opinion of the Public Access Counselor 09-FC-192*. "It is the responsibility of the public agency to respond to requests for access to public records within a specified time period. The APRA does not set any time periods for producing public records, merely for responding to the request." *See Opinion of the Public Access Counselor 02-FC-09*. Here, the Town responded to your request for cell phone records for Ms. McCombs on the date of its receipt and provided that you would be notified when the records were ready for pick up. You interpreted the acknowledgment received by the Town as a denial; I am unable to reach the same conclusion. The acknowledgement, in full, provided:

"I have received your faxed request for Town Records pertaining to Janet and Phil Stephens and President McCombs. As you are aware, these items will take some time to research and prepare. I will notify you when your copies of the records are ready."

The APRA *requires* public agencies to separate and/or redact confidential information in public records before making the disclosable information available for inspection and copying. *See* I.C. § 5-14-3-6(a). Thereafter, all records responsive to your request were provided to you. As such, it is my opinion that the Town has not violated the APRA.

CONCLUSION

Based on the foregoing, it is my opinion that the Town did not violate the APRA.

Best regards,

A handwritten signature in black ink, appearing to read "J. Hoage". The signature is written in a cursive style with a large initial "J" and a distinct "Hoage" at the end.

Joseph B. Hoage  
Public Access Counselor

cc: Peter Agostino