



STATE OF INDIANA

MICHAEL R. PENCE, Governor

PUBLIC ACCESS COUNSELOR
LUKE H. BRITT

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

September 8, 2015

Ms. Cheryl Evans
70 West Road
Dune Acres, IN 46304

Re: Formal Complaint 15-FC-215; Alleged Violation of the Access to Public Records Act by the Town of Dune Acres, Town of Dune Acres Plan Commission

Dear Ms. Evans,

This advisory opinion is in response to your formal complaint alleging the Town of Dune Acres and the Town of Dune Acres Plan Commission (together known as "Dune Acres"), violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et. seq.* Dune Acres has responded to your complaint via Carolyn Mellen, Clerk-Treasurer. Her response is enclosed for your review. Pursuant to Ind. Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on July 29, 2015.

BACKGROUND

Your complaint dated July 29, 2015, alleges that the Commission violated the APRA by denying your access to public records. On July 9, 2015 you sent an email to the Town Clerk-Treasurer, Plan Commission President, and Plan Commission Secretary requesting a copy of the Plan Commission membership certifications relating to the current Plan Commission members and a copy of the Plan Commission rules relating to the administration of the Plan Commission. You received a response on July 10, acknowledging the request and stating that the records would be made available in a reasonable amount of time.

On July 20, you sent another email inquiring as to whether the records you were requesting even existed. After getting no response, you sent another email on July 23 as to whether or not the records exist.



STATE OF INDIANA

MICHAEL R. PENCE, Governor

**PUBLIC ACCESS COUNSELOR
LUKE H. BRITT**

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

On August 12, Dune Acres responded stating that it was unaware of the certification requirement until your request. In response, the Commission created certification records responsive to your request.

With regards to the Commission Rules, Dune Acres states that some information is discussed in the zoning ordinances found online; however, there do not appear to be official rules relating to the administration of the Commission.

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 Ind. Code § 5-14-3-1. The Town of Dune Acres and the Dune Acres Plan Commission are public agencies for the purposes of the APRA. See Ind. Code § 5-14-3-2(m)(1). Accordingly, any person has the right to inspect and copy Dune Acres’s disclosable public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. See Ind. Code § 5-14-3-3(a).

Dune Acres evidently had been unaware of the certification requirement until your request. In response, it has created records responsive to your request. While, the APRA does not require a public agency to create records; Dune Acres has created records in response to a separate statute. The statutes mandating their creation are outside the purview of the APRA and the Public Access Counselor. Therefore, the failure to possess these records is not a violation of the APRA. It is my hope that you have been provided the certification records you seek.

Similarly, regarding your request for commission rules, Dune Acres has stated that there are no official rules. If that is the case, Dune Acres has fulfilled its obligation under the APRA by directing you to the ordinances that are most responsive to your request and because the APRA does not require an agency to create records. As for the enforcement of Ind. Code § 36-7-4-401 requiring the creation of rules, this Office does not have the regulatory authority to mandate their creation.



STATE OF INDIANA

MICHAEL R. PENCE, Governor

**PUBLIC ACCESS COUNSELOR
LUKE H. BRITT**

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

CONCLUSION

Based on the foregoing, it is the Opinion of the Public Access Counselor that the Town of Dune Acres and the Town of Dune Acres Plan Commission has not violated the Access to Public Records Act.

Regards,

A handwritten signature in black ink, appearing to read "LHB", is written over a light blue horizontal line.

Luke H. Britt
Public Access Counselor

Cc: Dan L. Whitten, Esq.
Carolyn Mellen