



STATE OF INDIANA

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September 24, 2015

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

Re: Formal Complaint 15-FC-226; Alleged Violation of the Access to Public Records Act by the Town Council of Dune Acres

Dear Ms. Evans,

This advisory opinion is in response to your formal complaint alleging the Town Council of Dune Acres, Town of Dune ("Council") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et. seq.* The Council has responded to your complaint via Mr. Dan L. Whitten, Esq.. His 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 August 7, 2015.

BACKGROUND

Your complaint dated August 7, 2015 alleges that the Council violated the APRA by denying you access to public records.

The Council held a meeting on July 21, 2015 wherein they announced that the Town had received an insurance denial letter from its insurance company. On July 22, you sent an email to the Town Clerk-Treasurer requesting a copy of the insurance coverage denial letter. You had not received the letter at the time of your filing of this complaint and contend that the delay in providing the document is unreasonable and shows a lack of good faith.

On August 6, the Town attorney informed you that the letter "was crafted by the agent of the town" and may fall under attorney client privilege. In its response dated August 12, the Town affirmed its assertion of attorney-client privilege.



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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 is a public agency 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 Council’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).

Records declared confidential by state statute are exempt from disclosure. See Ind. Code § 5-14-3-4(a)(1). Ind. Code § 34-46-3-1 provides a statutory privilege regarding attorney and client communications. Indiana courts have also recognized the confidentiality of such communications:

The privilege provides that when an attorney is consulted on business within the scope of his profession, the communications on the subject between him and his client should be treated as confidential. The privilege applies to all communications to an attorney for the purpose of obtaining professional legal advice or aid regarding the client's rights and liabilities.

Hueck v. State, 590 N.E.2d 581, 584 (Ind. Ct. App. 1992) (citations omitted).

“Information subject to the attorney client privilege retains its privileged character until the client has consented to its disclosure.” *Mayberry v. State*, 670 N.E.2d 1262, 1267 (Ind. 1996), citing *Key v. State*, 132 N.E.2d 143, 145 (Ind. 1956). Moreover, the Indiana Court of Appeals has held that government agencies may rely on the attorney-client privilege when they communicate with their attorneys on business within the scope of the attorney’s profession.

Based upon the evidence submitted, it does not appear that the insurance denial letter would be germane to the attorney-client relationship nor would it compromise the privileged communications that the legislature and courts have held sacred. The communication is between an insurer and its client. Although it may contain information regarding liability coverage and potential loss, it is not advice or aid. In the absence of further information, it is my opinion that the letter does not constitute attorney-client privilege and should therefore be released to you.



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Regards,

A handwritten signature in black ink, appearing to read "LH Britt", written in a cursive style.

Luke H. Britt
Public Access Counselor

Cc: Dan L. Whitten, Esq.