

February 28, 2005

Mr. Hans Markland
58 W. 1000 N.
Wheatfield, IN 46392

Re: Formal Complaint 05-FC-23; Alleged Violation of the Access to Public Records Act by the Jasper County Health Department

Dear Mr. Markland:

This is in response to your formal complaint alleging that the Jasper County Health Department violated the Access to Public Records Act ("APRA") by failing to allow inspection and copying of draft minutes. I find that the Jasper County Health Department violated the Access to Public Records Act.

BACKGROUND

You allege in your formal complaint that you went in person to the Jasper County Health Department ("Department") and asked to view the draft minutes and notes of the Jasper County Health Board meeting held January 17, 2005. At that time, Cheryl Ekstrom, the Director of Vital Records for the Department told you that you were not allowed to view them until the minutes are approved by the Health Board. At your request, she put this policy in writing, a copy of which you enclosed with your complaint.

I sent your formal complaint to the Department. I received a written response from Ms. Ekstrom, a copy of which I enclose for your reference. She stated that she had been in the process of organizing the notes of the meeting and typing them for approval when you came to the office. She also stated that the minutes are not yet approved by the Board. However, she goes on to state that you are welcome to view the notes and unapproved minutes of that meeting, and may copy them for \$0.10 per page.

ANALYSIS

Any person may inspect and copy the public records of a public agency during the agency's regular business hours, except as provided in section 4 of the Access to Public Records Act. Ind.Code 5-14-3-3(a). "Public record" is broadly defined in the APRA:..any writing, paper, report, study, map, photograph, book, card, tape recording, or other material that is created, received, retained, maintained, or filed by or with a public agency and which is generated on paper, paper substitutes, photographic media, chemically based media, magnetic or machine readable media, electronically stored data, or any other material, regardless of form or characteristics. IC 5-14-3-2.

The Department wrote you in denying you the record that "Minutes to Board meetings are not public records until approved by the Health Board, per Dr. Louck." This determination that unapproved minutes are not public records was not consistent with the plain language of the APRA. Hence, the Department's denial of the rough draft minutes or notes of the meeting was in violation of the APRA. You had the right to inspect the notes of the meeting and to copy them. As this office has frequently stated, a public agency may mark draft minutes as "draft" or "subject to approval" to assuage the concern that its draft minutes will be misconstrued as adopted minutes of the governing body.

It appears from the Department's response that it is now willing to permit the inspection and copying that is required under the APRA. The Department may charge a fee for copies only if the Jasper County Council has adopted a fee schedule that sets a copying fee at the "actual cost" of copying the record. The "actual cost" is defined as the cost of paper and the per page cost for the use of the copying equipment. IC 5-14-3-8(d).

CONCLUSION

For the foregoing reasons, I find that the Jasper County Health Department violated the Access to Public Records Act. However, the Jasper County Health Department has indicated that it intends to conform to the requirements of the APRA.

Sincerely,

Karen Davis
Public Access Counselor

cc: Ms. Cheryl Ekstrom