

March 17, 2005

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

Re: Formal Complaint 05-FC-35; Alleged Violation of the Access to Public Records Act by the Jasper County Commissioners and Jasper County Planning and Development

Dear Mr. Markland:

This is in response to your formal complaint alleging that the Jasper County Commissioners and Jasper County Planning and Development (collectively, "Jasper County") violated the Access to Public Records Act ("APRA") by failing to respond to your request for information regarding attorney Robert Randle. I find that Jasper County has not violated the Access to Public Records Act.

BACKGROUND

On February 3, 2005, you submitted a written request for records to Mary Scheurich, Director of Jasper County Planning and Development, and to Kendell Culp, Jasper County Commissioner. You requested for Attorney Robert Randle:

- Job description.
- Education and training background.
- Compensation and employment contract.
- Ethics training attended and completed in last three years.

It appears that you hand-delivered your request, because the County received it on February 3. In a letter dated February 4, 2005, Ms. Scheurich wrote to you that the Office of Planning and Development does not maintain the records that you seek. You filed your formal complaint on February 15, 2005, alleging that when you had received no response to your request by February 7, you went to Jasper County and was given a refusal letter. You state that Attorney Randle handles legal matters for the Jasper County Plan Commission, and that he is clearly employed by the county to handle its legal matters.

I sent a copy of your complaint to Jasper County. Ms. Scheurich responded in writing, a copy of which is attached for your reference. She states that she responded to your Feb. 3 request within four working hours of receiving it. She also told me via telephone that the reason that Jasper County does not maintain the records you requested is the County does not have a formal written contract (either an agreement or an engagement letter) with Attorney Robert Randle. Also, Mr. Randle is not an employee of Jasper County. Therefore, Jasper County maintains no record or records containing the information that you seek. Her February 4 letter to you was timely under the APRA and clearly stated that no records existed.

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 APRA. Ind.Code 5-14-3-3(a). When a public agency receives a written request for records in person or by telephone, the public agency must respond within 24 hours of receipt of the request. IC 5-14-3-9(a).

"Public record" is defined broadly in the APRA. It means any "writing, paper, report...or other material that is created, received, retained, maintained, or filed by or with a public agency..." IC 5-14-3-2. An agency may except from disclosure personnel files of public employees, except for certain information that is required to be disclosed. IC 5-14-3-4(b)(8). The information that must be disclosed, in relevant part, is: the employee's name, compensation, job title, education and training background and previous work experience. IC 5-14-3-4(b)(8)(A).

Attorney Robert Randle is not an employee of the County or of Jasper County Planning and Development, according to the County. Rather, he is an attorney in private practice. Therefore, the information that you are requesting is not subject to the disclosure requirements in IC 5-14-3-4(b)(8), because those apply only with respect to public employees.

A contract that a public agency maintains would be a public record, and is disclosable unless it is subject to an exception. I know of no exception to disclosure that would apply to an employment contract. However, the County has told me that it has not entered into a formal written agreement with Mr. Randle. This is why the County maintains that it has no record that is responsive to your request. A public agency is not required to create a record to respond to a request for information. If the County does not maintain a record that is responsive to any of your requests, it is not a violation of the APRA to refuse to disclose a nonexistent record, or not to create a record for you.

Also, because the County responded to your request on February 4 when it sent you its response, the County's response was not untimely under the APRA.

CONCLUSION

For the foregoing reasons, I find that Jasper County Planning and Development and County Commissioners did not violate the Access to Public Records Act.

Sincerely,

Karen Davis
Public Access Counselor

cc: Ms. Mary Scheurich
Kendell Culp