

August 13, 2007

Donald Hayes
1563 Gregory Lane
Jasper, Indiana 47546

Re: Formal Complaint 07-FC-206; Alleged Violation of the Access to Public Records Act by the Dubois County Auditor and Dubois County Commissioners

Dear Mr. Hayes:

This is in response to your formal complaint alleging the Dubois County Auditor (“Auditor”) and Dubois County Commissioners (“Commissioners”) violated the Access to Public Records Act (“APRA”) (Ind. Code §5-14-3) by denying you access to documents related to the Commissioners’ annual golf scramble. A copy of the Auditor’s response to your complaint is included for your reference. I find that neither the Dubois County Auditor nor the Dubois County Commissioners violated the APRA.

BACKGROUND

You filed a complaint on July 12, 2007 alleging the Auditor and Commissioners violated the APRA by denying you access to records pursuant to your July 10 request. You specifically requested records related to the income and expenditures from the 13th annual commissioners’ golf event, the balance in checking for the event, and expenditures during the past twelve months from the account. This records request followed two letters you sent to Commissioner John Burger. In those letters, dated June 23 and May 25, you asked a series of questions regarding the golf event.

The Auditor submitted a response to your complaint on July 25. The Auditor indicated that the golf event is held annually to pay for an employee Christmas dinner, for which employees themselves have paid in the past. The proceeds are also used to pay for a student government day, retirement receptions, and expenses related to public building and road dedications. The Auditor further indicated the event is staffed by elected officials as well as non-government individuals. Those government employees who work at the event use personal time to do so. The income and expenses related to the event go through a checking account maintained by an individual. The Auditor contends the event is not a function of government and therefore any records related to the event are not public records.

The Auditor further indicated that this issue has been addressed previously by Counselor O'Connor in *Opinion of the Public Access Counselor 02-FC-49*. In that opinion, Counselor O'Connor opined the records related to the event were not public records.

ANALYSIS

Indiana Code §5-14-3-3(a) provides that any person may inspect and copy the public records of any public agency during the regular business hours of the agency, except as provided in section 4 of APRA. A "public record" means 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. I.C. §5-14-3-2.

The Auditor and Commissioners are clearly public agencies for the purposes of the APRA. I.C. §5-14-3-2.

Here the Commissioners hold an annual golf event and use the proceeds for purposes outside the scope of the county budget (i.e. employee recognition, student government day, road and public building dedications). You allege the Auditor's office is listed on flyers for the event as the contact for responding to the event invitation. You indicate the flyers direct contributions to be sent to the Auditor at her office.

The issue presented here is whether the records related to the event are public records. I do not believe any records related to the event are created, received, retained, maintained or filed by the public agency. While I understand contributions may be sent to the Auditor at her office, it is my understanding from the facts presented the accounting and other transactions related to the outing are not part of the Auditor's records. It is outside my purview to address the propriety of this type of non-public activity being conducted through the Auditor's office or using public time or equipment. But I do agree with Counselor O'Connor that it does not appear any records associated with the event fall under the definition of public records.

CONCLUSION

For the foregoing reasons, I find that neither the Dubois County Auditor nor the Dubois County Commissioners violated the APRA.

Best regards,



Heather Willis Neal
Public Access Counselor

cc: Martha Wehr, Dubois County Auditor
John Burger, Dubois County Commissioners