

December 4, 2007

Travis Minnear
The Commercial Review
309 West Main Street
Portland, Indiana 47371

Re: Formal Complaint 07-FC-340; Alleged Violation of the Access to Public Records Act by the Jay County Auditor

Dear Mr. Minnear:

This advisory opinion is in response to your formal complaint alleging the Jay County Auditor ("Auditor") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by denying you access to copies of loan records you requested. I have enclosed a copy of the Auditor's response to your complaint for your reference. It is my opinion the Auditor did not violate the APRA for failing to produce records her office does not maintain.

BACKGROUND

In your complaint you allege you verbally requested from the Auditor on October 15 copies of loan documents relating to four loans secured by the county. You allege the Auditor indicated that no copies of the loan documents were maintained in the courthouse and that you should direct your request to the Jay County Development Corporation ("JCDC"). You allege you have requested copies of the records from the JCDC on several occasions and have been told the JCDC is reviewing the records to determine whether they are public records. You submitted this complaint on November 7.

The Auditor responded to your complaint by letter dated November 7. The Auditor indicated she had provided you with copies of payment schedules related to the loans but does not maintain copies of the loan documents and as such cannot provide them.

ANALYSIS

The public policy of the APRA states, "(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." I.C. §5-14-3-1. Any

person has the right to inspect and copy the public records of a public agency during regular business hours unless the public records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. I.C. §5-14-3-3(a).

The Auditor is clearly a public agency for the purposes of the APRA. I.C. §5-14-3-2. Accordingly, any person has the right to inspect and copy the public records of the Auditor during regular business hours unless the public records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. I.C. §5-14-3-3(a).

A request for records may be oral or written. I.C. §5-14-3-3(a); §5-14-3-9(c). If the request is made orally or in person at the office of the agency and the agency does not respond to the request within 24 hours of receipt, the request is deemed denied. I.C. §5-14-3-9(a). If the request is made orally, the agency may deny the request orally. I.C. §5-14-3-9(c). The agency must indicate the statutory authority for withholding all or part of the record. I.C. §5-14-3-9.

Here, you made the request for access to records to the Auditor. The Auditor has indicated her office is not the public agency responsible for maintaining the records. The APRA does not require a public agency to produce records created and/or maintained by another agency. As such, the Auditor has not violated the APRA by failing to produce copies of the loan documents.

I believe your request should be directed to the JCDC. If the JCDC is a public agency as defined in I.C. §5-14-3-2(l) and the loan documents are records as defined in I.C. §5-14-3-2(m), the JCDC would have a duty to disclose those records unless it can provide statutory authority exempting the records from disclosure. I.C. §5-14-3-3.

CONCLUSION

For the foregoing reasons, it is my opinion the Jay County Auditor did not violate the Access to Public Records Act.

Best regards,



Heather Willis Neal
Public Access Counselor

cc: Freda Corwin, Jay County Auditor