



STATE OF INDIANA

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January 27, 2010

Ms. Tammy Lahndorf
23203 Oakleaf Dr. N.
Elkhart, IN 46514

Re: Formal Complaint 10-FC-11; Alleged Violation of the Access to Public Records Act by the St. Joseph County Auditor

Dear Ms. Lahndorf:

This advisory opinion is in response to your formal complaint alleging the St. Joseph County Auditor ("Auditor") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.*, by denying you access to public records.

BACKGROUND

According to your complaint, the Auditor's office has refused your request for access to "the list of property owners that have the Over 65 age exemption filed on their property." The Auditor informed you that that information could not be given out. You claim that two of your colleagues have received similar information from the Allen County Auditor and the St. Joseph County Auditor, respectively, with the latter requiring your colleague that s/he would have to sign a letter confirming that s/he would not make any profit from the list.

My office forwarded a copy of your complaints to the Auditor. To date, we have not received a response.

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." Ind. Code § 5-14-3-1. 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 Auditor's public records 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 a request is made orally, either in person or by telephone, a public agency may deny the request orally. I.C. § 5-14-3-9(c). If the request is delivered by mail or facsimile and the agency does not respond to the request within seven (7) days of receipt, the request is deemed denied. I.C. § 5-14-3-9(b). If the request is delivered in person and the agency does not respond within twenty-four (24) hours, the request is deemed denied. I.C. § 5-14-3-9(a). A response from the public agency could be an acknowledgement that the request has been received and information regarding how or when the agency intends to comply.

When the request is made in writing and the agency denies the request, the agency must deny the request in writing and must include a statement of the specific exemption or exemptions authorizing the withholding of all or part of the record and the name and title or position of the person responsible for the denial. I.C. § 5-14-3-9(c).

Here, it is unclear to me why the Auditor denied your request. You state that in response to several of your “calls” (presumably via telephone) to the Auditor’s office, the Auditor informed you that the requested information could not be released. While the *form* of the Auditor’s denial has not violated the APRA, I do not have sufficient information to determine whether or not the *substance* of the denial violated the APRA (i.e., whether or not the Auditor had sufficient legal basis to deny your request).

Under the APRA, a public agency that withholds a public record bears the burden of showing that the record is exempt. I.C. §§ 5-14-3-1, 5-14-3-9(f) and (g). Exceptions to disclosure are narrowly construed. I.C. § 5-14-3-1. Because the Auditor has not provided a justification for withholding the records at issue here, it is my opinion that the Auditor has failed to carry that burden.

If the Auditor cannot justify withholding the records under the APRA, I encourage the Auditor to release the records to you as soon as possible. To the extent the Auditor persists in its denial of access following the issuance of an advisory opinion from this office and you believe the Auditor to be in violation of the APRA, I leave you to your remedies before a court pursuant to Ind. Code § 5-14-3-9(e).

CONCLUSION

For the foregoing reasons, it is my opinion that the Auditor has not sustained its burden of proof to show that withholding the records was appropriate under the APRA.

Best regards,

A handwritten signature in black ink that reads "Andrew J. Kossack". The signature is written in a cursive style with a large, sweeping initial 'A'.

Andrew J. Kossack
Public Access Counselor

cc: Peter Mullen, St. Joseph County Auditor's Office