



STATE OF INDIANA

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September 10, 2010

Mr. Fredrick R. Spencer
714 Garden Court
Anderson, IN 46011

*Re: Formal Complaint 10-FC-177; Alleged Violation of the Access to
Public Records Act by the City of Anderson Park Department*

Dear Mr. Spencer:

This advisory opinion is in response to your formal complaint alleging that the City of Anderson Park Department (“Department”) violated the Access to Public Records Act (“APRA”), Ind. Code § 5-14-3-1 *et seq.*, by denying you access to public records. A copy of the Department’s response to your complaint is enclosed for your review.

BACKGROUND

In your complaint, you allege that you requested to review and copy certain public records. You claim that in response to your July 30, 2010, request, the Department informed you that “it is being reviewed by legal.” You further allege that the Department requested that you pay copy fees in advance and denied your request to inspect the records. You also believe that the Department has failed to produce the requested records within a reasonable amount of time.

My office forwarded a copy of your second complaint to the Department. The City of Anderson’s legal counsel, Evan Broderick, responded on behalf of the Department. Mr. Broderick claims that you were never denied the right to copy and inspect the records at issue. He states that you came to the Department on July 23, 2010. At that time, you delivered a hand-written request for documents to Department Director John Gates. In response, Mr. Broderick informed you that you would need to submit your request on the City of Anderson’s public records request form and deliver it to Tammy Bowman, the city’s public relations officer. You submitted the form on or about July 27th, along with a hand-written letter stating that you would return on August 3rd to review the requested records.

Prior to August 3rd, Mr. Broderick states that he spoke to you via the telephone. At that time, you alleged that the Department’s failure to produce the records would be

reported to the Office of the Public Access Counselor. Mr. Broderick reminded you of your letter in which you wrote that you would return for the records on August 3rd. He also informed you that certain records were available for you to inspect and copy at the controller's office and that he had procured records you requested from 2010, but that he was still attempting to locate certain records from 2008 and 2009. In response, Mr. Broderick says that you wanted to view all of the records at the same time in the same location. Mr. Broderick denied that request on the basis that the financial reports should not leave the controller's office. Mr. Broderick offered his conference room for your use in inspecting the records, and you accepted that proposal. However, he claims that you did not attempt to pick up any documents on August 3rd, and that he contacted you on August 9th regarding some of the records from 2008, but you still had not returned to inspect or copy the documents. He states that you reviewed some records on August 17th and informed him at that time that your inquiry was satisfied (although you later requested to return and inspect the records again, which Mr. Broderick allowed you to do on August 20th).

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. Purdue does not dispute that it is a public agency for the purposes of the APRA. I.C. § 5-14-3-2(m). Accordingly, any person has the right to inspect and copy the Department'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).

Under the APRA, an agency may require that public access requests are submitted on a particular form. Specifically, the APRA provides that “[a] request for inspection or copying must: (1) identify with reasonable particularity the record being requested; and (2) be, at the discretion of the agency, in writing on or in a form provided by the agency.” I.C. § 5-14-3-3(a). Thus, the Department did not violate the APRA by requiring you to submit your request on the form that it provided to you.

With regard to your allegation that the Department failed to produce the records within a reasonable time, there are no prescribed timeframes when the records must be produced by a public agency. The public access counselor has stated repeatedly that records must be produced within a reasonable period of time, based on the facts and circumstances. Considering factors such as the nature of the requests (whether they are broad or narrow), how old the records are, and whether the records must be reviewed and edited to delete nondisclosable material is necessary to determine whether the agency has produced records within a reasonable timeframe. Section 7 of the APRA requires a public agency to regulate any material interference with the regular discharge of the functions or duties of the public agency or public employees. I.C. § 5-14-3-7(a). However, Section 7 does not operate to deny to any person the rights secured by Section

3 of the Access to Public Records Act. I.C. § 5-14-3-7(c). The ultimate burden lies with the public agency to show the time period for producing documents is reasonable. *See* I.C. § 5-14-3-1; *Opinion of the Public Access Counselor 02-FC-45*.

Here, you made your initial request on or about July 23rd. The Department has been in contact with you several times since then and, in accordance with your instructions, prepared records for inspection and copying on August 3rd, but you did not appear to review them. Moreover, it is my understanding that you reviewed the Department's records on August 17th and 20th to your satisfaction. In my opinion, the Department has acted reasonably.

CONCLUSION

For the foregoing reasons, it is my opinion that the Department did not violate the APRA.

Best regards,

A handwritten signature in black ink that reads "Andrew J. Kossack". The signature is written in a cursive, slightly slanted style.

Andrew J. Kossack
Public Access Counselor

Cc: Evan Broderick