



STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

PUBLIC ACCESS COUNSELOR
ANDREW J. KOSSACK

Indiana Government Center South
402 West Washington Street, Room W470
Indianapolis, Indiana 46204-2745
Telephone: (317)233-9435
Fax: (317)233-3091
1-800-228-6013
www.IN.gov/pac

November 1, 2010

Mr. David M. Mowery
Via email: mowery.david@principal.com

Re: Formal Complaint 10-FC-234; Alleged Violation of the Access to Public Records Act by the City of Marion

Dear Mr. Mowery:

This advisory opinion is in response to your formal complaint alleging the City of Marion (the "City") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* The City's response to your complaint is enclosed for your reference.

BACKGROUND

In your complaint, you allege that the City violated the APRA by refusing to provide you with "[a]ny and all addresses in the City of Marion that are subject/to [sic] and billed/for [sic] trash fees." You believe that the City has cited to portions of the code pertaining to the water department in "an attempt to hide/delay or otherwise ignore this information that is indeed public records."¹

In response to your complaint, City Corporation Counsel Joshua Howell states that the City denied you access to the information after consulting with this office.

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." I.C.

¹ Your complaint also makes reference to the City's alleged failure to publish telephone and facsimile numbers in the phone book provided by the phone company. However, nothing in the APRA requires the City to publish that information in any medium. Moreover, such an allegation is not ripe for inclusion in a formal complaint because it is not alleged that the City has actually denied you access to that information in violation of the APRA. *See* I.C. § 5-14-5-6 (requiring that a complainant show that a public agency "denied" a right under the APRA or Open Door Law). If you make a request for such information and the City denies you access to it, you may file a complaint with this office. Alternatively, you could seek my informal opinion on the matter under I.C. § 5-14-4-10(5).

§ 5-14-3-1. The City does not contest that it is 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 City's public records during regular business hours unless the records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. I.C. § 5-14-3-3(a).

Section 4(b) of the APRA excepts from disclosure several categories of records. Public agencies have the discretion to withhold such records at their discretion. One such provision is an exception to disclosure for the telephone number, address, and social security number of customers of municipally owned utilities. *See* I.C. § 5-14-3-4(b)(20). The City denied you access to information about residents who receive trash pickup services under this exception. The City does not allege that the trash service is a municipally owned utility. However, the information regarding trash customers is obtained from a municipally owned utility: the water company. The City would not have access to such information were it not provided by the water company, and all of the information concerns customers of the water company. Consequently, the information falls within the plain language of subsection 4(b)(20) ("personal information concerning a customer of a municipally owned utility") and it can be withheld at the City's discretion.

CONCLUSION

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

Best regards,



Andrew J. Kossack
Public Access Counselor

Cc: Joshua Howell