



STATE OF INDIANA

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February 22, 2010

Mr. Thomas L. Mathis
3433 W. 900 N.
Wheatfield, IN 46392

Re: Formal Complaint 10-FC-24; Alleged Violation of the Open Door Law by Jasper County Planning & Development

Dear Mr. Mathis:

This advisory opinion is in response to your formal complaint alleging that Jasper County Planning & Development ("JCPD") 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 JCPD's response to your complaint is enclosed for your review.

BACKGROUND

In your complaint, you allege that you requested "certificates of occupancy and written determinations for several causes that have come before planning and the BZA." JCPD granted your request on January 6, 2010, and made copies of records available to you on January 12th. When you went to the office on January 13th, JCPD informed you "they had no information" for you.

My office forwarded a copy of your second complaint to JCPD. In response, JCPD's director, Mary Scheurich, states that the only information JCPD has that is responsive to your request consists of board minutes showing decisions, which had already been provided to you prior to January 13th. Ms. Scheurich states that JCPD has not refused to provide you with any documents and argues that JCPD cannot produce what it does not have.

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. JCPD 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 JCPD'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).

Here, JCPD claims that it has already produced to you all relevant records and has no other information or records responsive to your request. If the JCPD has no other records responsive to your request, it has not violated the APRA by failing to provide you with records other than the board minutes. "[T]he APRA governs access to the public records of a public agency that exist; the failure to produce public records that do not exist or are not maintained by the public agency is not a denial under the APRA." *Opinion of the Public Access Counselor 01-FC-61*; see also *Opinion of the Public Access Counselor 08-FC-113* ("If the records do not exist, certainly the [agency] could not be required to produce a copy....").

CONCLUSION

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

Best regards,



Andrew J. Kossack
Public Access Counselor

Cc: Mary M. Scheurich