



STATE OF INDIANA

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December 22, 2010

Mr. George M. Georgeff
3333 Ridge Rd.
Highland, IN 46322

Re: Formal Complaint 10-FC-297; Alleged Violation of the Access to Public Records Act by Lake County 911

Dear Mr. Georgeff:

This advisory opinion is in response to your formal complaint alleging Lake County 911 (the "Agency") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* A copy of the Agency's response is enclosed for your reference.

BACKGROUND

According to your complaint, on November 3, 2010, you sent via facsimile a records request to Jeff Cicillian at the Agency seeking copies of all inter-local agreements regarding 911 consolidation. You sought to include in your request those that had been signed and any that have been presented to other communities. As of November 22, 2010, you had not received a response from the Agency.

My office forwarded a copy of your complaints to the Agency. Mr. Cicillian responded on its behalf. He states that he received your request on November 3rd, but he has been dealing with his terminally ill father, who has been in intensive care for the past couple of weeks. He notes that only a draft agreement has been completed at this time and it has not been signed, and that he would have appreciated a follow up communication from you if you needed the records sooner.

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. The Agency does not contest that it is a "public agency" under the APRA. I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy the Agency's public

records during regular business hours unless the public records are excepted from disclosure as nondisclosable under the APRA. I.C. § 5-14-3-3(a).

Regarding the fact that the agreements were in draft form and unsigned, previous opinions from this office have viewed draft or incomplete records as disclosable public records under the APRA. See *Opinion of the Public Access Counselor 08-FC-54; 06-FC-124; 05-FC-142; 98-FC-4*. In one such case, Counselor Neal reasoned:

Here the Auditor may sustain the denial by providing the statutory authority exempting the record from disclosure. The record is not exempted from disclosure merely by the fact that it is a draft or incomplete record. The APRA does not require a record to be in its final or complete form before it can be produced pursuant to a request.

Opinion of the Public Access Counselor 08-FC-54. In her opinion, Counselor Neal concluded that an auditor could not deny access to a deed simply because the deed had not yet been recorded; the deed existed and was maintained by a public agency, so it should have been disclosed unless an exception to the APRA permitted or required the auditor to withhold it. *Id.* On the other hand, if an *initial* draft of a record is not yet complete (i.e., the draft is in the process of being created for the first time), an Agency does not violate the APRA by withholding it. *Opinion of the Public Access Counselor 10-FC-56* (“Draft minutes that have not yet been approved are different than records that have not yet been created. Where records are not yet created, a public agency does not violate the APRA by refusing to produce them.”) Here, if the “draft” agreement was already created and in existence at the time you made your request, the Agency should disclose the record to you even if it was subject to revisions and had not yet been signed.

CONCLUSION

For the foregoing reasons, it is my opinion that if the requested agreement existed at the time of your request, it should be released to you even if it is in draft form and unsigned by the parties.

Best regards,



Andrew J. Kossack
Public Access Counselor

cc: Jeff Cicillian