



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

January 11, 2010

Ms. KerryAnn May
910 Revelio Street
Shelbyville, IN 46716

*Re: Formal Complaint 10-FC-5; Alleged Violation of the Access to
Public Records Act by the Shelbyville County Animal Shelter*

Dear Ms. May:

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

BACKGROUND

In your complaint, you allege that you submitted three requests to the Shelter on September 2nd, October 8th, and October 27th of last year. You sought access to records regarding which animal welfare groups were accepting transfer or adopting animals from the Shelter. You requested the "name of the organization, species transferred, date of transfer, and the fee the group paid to the shelter for the animal." On December 1st, the Shelter provided you with more than four hundred (400) pages of records. However, you allege that the Shelter's response is incomplete because the records do not show which organization(s) received the animals.

The Shelbyville City Attorney Michelle Cobourn-Baurley responded to your complaint on behalf of the Shelter. According to Ms. Cobourn-Baurley, the Shelter has provided you with all responsive records and cannot produce records regarding the organizations that received animals because it has no such records. Ms. Cobourn-Baurley further argues that the Shelter provided you with records within a reasonable amount of time considering the number of records requested and staff reductions at the Shelter.

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. § 5-14-3-1. The Shelter 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 Shelter’s public records during regular business hours unless the records are excepted from disclosure as confidential or nondisclosable under the APRA. I.C. § 5-14-3-3(a).

The APRA does not prescribe a timeframe during which a public agency must produce public records. The public access counselor has stated repeatedly that records must be produced within a reasonable period of time, based on the relevant 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. *Opinion of the Public Access Counselor 02-FC-45.*

According to Ms. Cobourn-Baurley, you requested approximately four hundred (400) pages of records, which took the Shelter’s staff several weeks to compile due to staff reductions. You and Ms. Cobourn-Baurley communicated throughout this process and she repeatedly assured you that the Shelter was working diligently to provide you with the requested records. In my opinion, these facts indicate the Shelter produced the records within a reasonable amount of time.

As to your allegation that the Shelter has failed to produce records regarding the organization(s) that received animals, Ms. Cobourn-Baurley maintains that the Shelter has no records which contain that information. If that is the case, the Shelter did not violate the APRA by failing to provide you with that information. “[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 the Shelter 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 style with a large, sweeping initial 'A'.

Andrew J. Kossack
Public Access Counselor

cc: Michelle A. Cobourn-Baurley