



STATE OF INDIANA

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April 25, 2011

Mr. Michael L. Bohacek
220 Pokagon Trail
Michiana Shores, IN 46360

Re: Formal Complaint 11-FC-81; Alleged Violation of the Access to Public Records Act by the LaPorte County Commissioners

Dear Mr. Bohacek:

This advisory opinion is in response to your formal complaint alleging the LaPorte County Commissioners (“Commissioners”) violated the Access to Public Records Act (“APRA”), Ind. Code § 5-14-3-1 *et seq.* My office forwarded a copy of your complaint to Commissioner Willie Milsap, but we have not yet received a response.

BACKGROUND

In your complaint, you allege that on March 17, 2011, the Commissioners office notified you that your records were ready to be picked up from those offices. You went to the county’s offices to pick up the records, but staff there informed you that Commissioner Milsap was in a meeting and that you could only receive the records from him. You sent Mr. Milsap several emails to arrange to pick up the records, but he demanded that you meet with him personally to pick up the requested information. On March 21st, you visited the Commissioners’ office again to pick up the records, but a secretary there told you that Commissioner Milsap had them. That same day, you claim that Mr. Milsap “threatened to come to [your] home and personally deliver the requested documents if I didn’t come back and pick them up from him personally.” You consider his actions “both threatening and intimidating” and a denial of your request due to the lack of statutory basis for failing to release the records to you.

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. County commissioners are public agencies for the purposes of the APRA. I.C. §

5-14-3-2. Accordingly, any person has the right to inspect and copy the Commissioners' 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).

Under the APRA, an agency may require requesters to follow certain procedures when making public records requests. Specifically, the APRA permits agencies to require that public access requests be submitted on a particular form and "during regular business hours" of the agency. *Id.* 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). However, there is no basis in the APRA or any other statute for requiring a requester to meet with a certain agency official prior to releasing responsive records. In fact, the APRA provides that a public agency "may not deny or interfere with the exercise of the right [to inspect and copy public records] stated in subsection (a)." I.C. § 5-14-3-3(b). Because the Commissioners have produced no statutory basis for their refusal to permit you to pick up responsive records from their staff during regular business hours, it is my opinion the Commissioners unlawfully interfered with the rights provided you in subsection 3(a) of the APRA.

CONCLUSION

For the foregoing reasons, it is my opinion that the Commissioners violated the APRA if they refused to permit you to pick up your records until you met in person with Commissioner Milsap.

Best regards,



Andrew J. Kossack
Public Access Counselor

cc: Commissioner Willie Milsap