



STATE OF INDIANA
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July 29, 2013

Mr. Thomas E. Mason
4800 S 930 E
Wolcottville, Indiana 46795

Re: Formal Complaint 13-FC-196; Alleged Violation of the Access to Public Records Act by the LaGrange County Regional Utility District

Dear Mr. Mason:

This advisory opinion is in response to your formal complaint alleging the LaGrange County Regional Utility District ("District") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* John Gastineau, Attorney, responded on behalf of the District. His response is enclosed for your reference.

BACKGROUND

In your formal complaint you provide that on June 20, 2013, you submitted a written request to the District to inspect or copy the following public records:

"Names of all full time and part time employees from 1995 through 2000 calendar years."

On June 24, 2013, the District acknowledged the receipt of your request in writing and informed you that the records sought will be available for inspection or pick-up by June 28, 2013. On July 2, 2013 you appeared at the District's offices to pick up a copy of the response to your request. The District response provided that it was not required to provide a list of names of employees pursuant to I.C. § 5-14-3-3(f). As a rate payer, you believe that you are entitled to a disclosure from the District in response to your request.

In response to your formal complaint, Mr. Gastineau advised that the District does not maintain a record responsive to your specific request, nor has one ever existed or been compiled. Further, I.C. § 5-14-3-3(f) would exempt such a list from disclosure if maintained by the District.

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.” *See* I.C. § 5-14-3-1. The District is a public agency for the purposes of the APRA. *See* I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy the District’s public records during regular business hours unless the records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. *See* I.C. § 5-14-3-3(a).

A request for records may be oral or written. *See* I.C. § 5-14-3-3(a); § 5-14-3-9(c). If the request is delivered in person and the agency does not respond within twenty-four hours, the request is deemed denied. *See* I.C. § 5-14-3-9(a). If the request is delivered by mail or facsimile and the agency does not respond to the request within seven days of receipt, the request is deemed denied. *See* I.C. § 5-14-3-9(b). A response from the public agency could be an acknowledgement that the request has been received and information regarding how or when the agency intends to comply.

Generally, if a public agency has no records responsive to a public records request, the agency does not violate the APRA by denying the request. “[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....”). Further, the APRA specifies that “a public agency is not required to create or provide copies of lists of names and addresses (including electronic mail account addresses) unless the public agency is required to publish such lists and disseminate them to the public under a statute.” *See* I.C. § 5-14-3-3(f). “However, if a public agency has created a list of names and addresses (excluding electronic mail account addresses) it must permit a person to inspect and make memoranda abstracts from the list unless access to the list is prohibited by law.” *Id.* Here, the District has provided that it does not maintain a record responsive to your request, nor has one ever existed or been compiled. As such, it is my opinion that the District did not violate the APRA by failing to produce a record that has never existed or create a record in response to your request.

CONCLUSION

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

Best regards,

A handwritten signature in black ink, appearing to read "J. Hoage". The signature is written in a cursive style with a large initial "J" and a distinct "H".

Joseph B. Hoage
Public Access Counselor

cc: John R. Gastineau