

July 10, 2000

Mr. Eugene C. Thompson  
P.O. Box 661  
Zionsville, Indiana 46077

Re: Advisory Opinion 00-FC-16 *Denial of Access to Attorney Billing Statements by the Town of Zionsville.*

Dear Mr. Thompson:

This is in response to your formal complaint, which was received on June 19, 2000. You have alleged that the Town of Zionsville ("Town") has violated the Indiana Access to Public Records Act ("APRA"), Indiana Code chapter 5-14-3, by failing to produce original billing statements submitted by Town Attorney Andrew Buroker and his firm, Krieg, Devault, Alexander & Capehart ("KDAC") for a specific time period. Mr. Buroker responded to your complaint on behalf of the Town in a letter dated June 26, 2000, and a copy of his response is attached for your reference.

For the reasons stated below, it is my opinion that the Town should have provided you with copies of the original attorney billing statements you requested and the failure to do so constituted a denial of access to public records under the APRA. The Town was under an obligation to separate or redact the nondisclosable information from the disclosable information in those statements under Indiana Code section 5-14-3-6(a) rather than produce new summaries of those statements in response to your request.

### BACKGROUND

According to your complaint, you mailed a request for public records to Zionsville Clerk-Treasurer Beverly Harves on June 1, 2000. In your request, you asked for, among other things, "invoices, with descriptions of work performed, for Krieg, Devault, Alexander & Capehart...and other professionals who may have provided services to the Town on annexation issues between October 1, 1999, and May 31, 2000." In a letter dated June 8, 2000, Mr. Buroker responded to your request for the above-referenced documents by sending you copies of "summary invoices" of KDAC to the Town that included the appropriate project work and time frame. Mr. Buroker wrote:

Such invoices are summary only and do not contain description of work performed, as such itemized bills and statements which reveal the nature of services provided to client fall within the attorney-client privilege.

The summary invoices listed total fees "for professional services rendered" but did not include a description of the work performed by any attorney with KDAC. In contrast, the original billing statements received by the Town did include an itemization of services performed by KDAC attorneys. These summarized billing statements only provided itemizations for copy fees, messenger costs, telephone, postage and computerized legal research. You filed your complaint a short time thereafter, alleging that the Town had denied access to the specific information contained in the original billing statements.

## ANALYSIS

The APRA was enacted to ensure the citizens of Indiana access to public documents, thereby granting them the opportunity to more fully understand and participate in the affairs of government. In fact, the preamble to the APRA states:

(I)t is the public policy of the state that all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees. Providing persons with the 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.

Indiana Code §5-14-3-1. The Town is clearly a public agency for the purposes of the APRA. Ind. Code § 5-14-3-2. Public records are defined under the APRA to include any writing that is received or maintained by a public agency. Id. Any person is entitled to inspect and copy public records concerning the Town's business unless the records are excepted from disclosure as confidential or otherwise nondisclosable under Indiana Code section 5-14-3-4. Ind. Code §5-14-3-3(a).

### *Requests for Access to Public Records*

When a request for public records is submitted, the desired documents must be described with "reasonable particularity." Ind. Code § 5-14-3-3(a)(1). In other words, the public agency should be able to recognize the nature of the request and locate the desired documents. Your request for "invoices, with description of work performed" by Mr. Buroker and his firm during a specific time period left little room for interpretation on the part of the Town or the Clerk-Treasurer. Your request thus satisfied the requirements of the APRA. However, the documents produced by Mr. Buroker contained no "description of work performed," but rather a summary of the original billing statement submitted to the Town for all attorney services rendered during the stated time period.

Typically, an attorney's itemized billing statement contains references to work performed such as "research conducted," "memo drafted to client," or "meeting with client regarding strategy." The purpose of the itemization process is to inform a client, be it private or public, of the nature of the services for which the client is paying the attorney. Mr. Buroker's response to your complaint and his accompanying affidavit confirms that a description of work performed by KDAC was provided to the Town in the

original bills submitted by his law firm.

### *Application of Attorney-Client Privilege to Requested Documents*

As mentioned above, a public agency has the obligation to permit access to public records unless the records are excepted from disclosure by statute or some other provision of the APRA. Mr. Buroker asserts in his response that the billing information you sought is protected by the attorney-client privilege and is therefore confidential under Indiana Code chapter 34-46-1 and nondisclosable under Indiana Code sections 5-14-3-4(a)(1) and (a)(8). In its assertion of the attorney-client privilege through Mr. Buroker, the Town wants to protect the communication and advice provided to the Town by Mr. Buroker that might have been reflected in the billing statements. Indeed, it is the Town's prerogative to assert such a privilege<sup>1</sup>, and Indiana courts have recognized the confidentiality of attorney-client communications.<sup>2</sup>

However, it is my opinion that the Town has erred in its reliance upon the attorney-client privilege in this matter on two fronts. First, it is difficult to conceive of an invoice for legal services containing only information that is subject to the attorney-client communication privilege. Mr. Buroker argues that the billing statements from KDAC to the Town were "correspondence between attorney and client which reveals the client's motivation for creation of the relationship or possible litigation strategy."<sup>3</sup> The Town is, therefore, asserting that all of the information in those public records, including the amounts for which the Town was being billed for services, would provide the reader with insight into the substance of confidential advice or discussions between the Town and KDAC.

Secondly, even if most of the information contained in the billing statements was confidential under the attorney-client privilege, the Town was obligated to separate the nondisclosable information from the disclosable information in those billing statements and provide a copy of the requested invoices. Indiana Code section 5-14-3-6(a) states that

(i) if a public record contains disclosable and nondisclosable information, the public agency shall, upon receipt of a request...*separate the material that may be disclosed and make it available for inspection and copying.*

*(Emphasis added).* Your request was for a copy of the original billing statements with the statements of services provided to the Town. The Town should have provided you with a copy of the original billing statements for the time period requested, even if ultimately much of the written information was redacted based upon the assertion of the attorney-client privilege.

It is worthy of mention that the Town was interested in satisfying your request since it created and provided to you a summary document listing the fees that had been paid to KDAC. Unfortunately, the summary neither adequately reflected what the original invoice, nor did it list the specific work performed—even if redacted from the otherwise disclosable information. It is incumbent upon public officials to be accountable for the funds disbursed by their agencies, and the records that they retain should reflect accurately the nature of services performed at taxpayers' expense. The invoices that detail KDAC's work for the Town are in the possession of the Town

and though perhaps much of the information is arguably privileged, the original billing statements with any appropriate redactions should have been provided to you by the Town upon request.

## CONCLUSION

It is my opinion that the Town of Zionsville violated the APRA in its failure to provide you with copies of the documents you requested, with redactions of any confidential or otherwise nondisclosable information as permitted by statute. It was not an appropriate response to your request for the Town to create new summary billing statements to avoid production of these public records.

Sincerely,

Anne Mullin O'Connor

cc: Andrew B. Buroker, Attorney  
Town of Zionsville

<sup>1</sup> The privileged relationship of attorney and client applies to public agencies as well as to private clients. *Indiana State Highway Commission v. Morris*, 528 N.E.2d 468 (Ind. 1988).

<sup>2</sup> *Heuck v. State*, 590 N.E.2d 581 (Ind. App. 1992).

<sup>3</sup> *In re Grand Jury Witness (Salas)*, 695 F.2d 359, 362 (9th Cir. 1992).

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