

October 1, 2002

Mr. Donald L. Hayes
P.O. Box 532
Jasper, IN 47547-0532

Re: *Advisory Opinion 02-FC-49*;

Alleged Denial of Access to Public Records by the Dubois County Board of Commissioners and County Auditor.

Dear Mr. Hayes:

This is in response to your formal complaint, which was received on September 20, 2002. You have alleged that the Dubois County Board of Commissioners and County Auditor (hereinafter "Commissioners and Auditor's Office,") violated the Indiana Access to Public Records Act, Indiana Code chapter 5-14-3 (hereinafter "APRA") by denying you access to public records. Specifically, you claim that the failure to produce records concerning a golf tournament held by the Commissioners violated the APRA. Ms. Martha Wehr, Dubois County Auditor, provided a written response on behalf of her office and the Commissioners and a copy of her response is enclosed for your reference. For the reasons stated below, it is my opinion that the Commissioners and Auditor's Office did not deny you access to public records in violation of the APRA as there appear to be no public records related to the golf tournament in question.

BACKGROUND

According to your complaint, you made a written request to Auditor Wehr on August 26, 2002 for copies of the following records related to a golf tournament held by the Commissioners on June 20, 2002:

A copy of the letter sent to potential contributors soliciting teams, hole sponsorships, and/or prizes for the tourney [and] a copy of the stationery used for these letters.

A list of the names and addresses of contributors to the tourney including the amounts each contributed.

A list of the expenses incurred for the tourney including the amounts paid for the use of the Jasper Municipal Golf Course, meals, prizes, refreshments, etc.

You also asked a number of questions of Auditor Wehr, as to where the funds are kept, who has authority to draw upon the funds and the current balance in the account. You received a response from Auditor Wehr dated September 11, 2002 in which she advised you that the golf tournament is not a government project, the proceeds are not public funds and the records are not subject to your inspection. You then filed your formal complaint with this Office.

In her response, Auditor Wehr stated that the golf tournament in question was started by one Commissioner as a means of raising funds to pay for the expenses related to the county employees' Christmas dinner in a year when no pay raises were given. In recent years, the funds raised have also been used to pay for student government day and other events. The income and expenses, and related paperwork, is handled by an individual commissioner, who makes periodic reports to the other persons who are involved in operating the tournament. The golf tournament is not a governmental event, and the proceeds are not deposited with the county. Essentially, Auditor Wehr stated that there are no public records of this golf tournament, so she had no records to produce in response to your August 26th request.

ANALYSIS

"It is the public policy of the state that all persons are entitled to full and complete information regarding the affairs of government." Ind. Code § 5-14-3-1. Further, the Indiana General Assembly has provided that the APRA is to be liberally construed in favor of this policy and the burden of proof for nondisclosure of a public record lies with the public agency, not the person seeking access to the public record. Id.

A public record is defined to include any information, in whatever form, that is filed with, created, received or maintained by a public agency. Ind. Code § 5-14-3-2. Public records are to be available for copying and inspection unless the public record is confidential under Indiana Code subsection 5-14-3-4 (a) or nondisclosable at the agency's discretion under Indiana Code subsection 5-14-3-4(b). Ind. Code §5-14-3-3. A public agency, therefore, is obligated to produce any disclosable public record that is maintained by the agency.

Under the facts presented, while public officials may be involved in the operation of the golf tournament, it appears that the records related to that tournament are not created, received, or maintained by the Commissioners or Auditor's Office. The fact that Commissioners and other public officials are involved does not make the golf tournament records "public records" under the APRA. Further, it appears that the funds raised by this tournament are not part of the Auditor's Office's records because they are maintained in a checking account with a private bank. The Commissioners and Auditor's Office did not deny you access to public records because there are no public records related to the golf tournament. For this reason, it is my opinion that the Commissioners and Auditor's Office did not deny you access to public records in violation of the APRA.

On a final note, you included in your August 26th request questions for Auditor Wehr concerning the

operation of the golf tournament. Under the APRA, a person may request access to public records, but the Act does not require public officials to answer questions. Auditor Wehr's failure to answer these questions, therefore, did not violate the APRA.

CONCLUSION

It is my opinion that Dubois County Board of Commissioners and Auditor did not violate the APRA with respect to your August 26, 2002 request for access to public records of a golf tournament since there are no public records of that event.

Sincerely,

Anne Mullin O'Connor

Enclosure cc: The Honorable Martha Wehr, Dubois Co. Auditor w/o enclosure
