

June 20, 2001

Mr. Richard L. Simers
P.O. Box 2936
Indianapolis, IN 46206

Re: 01-FC-33; Alleged Violation of the Access to Public Records Act by Everybody Counts Center for Independent Living.

Dear Mr. Simers:

This is in response to your formal complaint, which was received in this Office on May 23, 2001. You have alleged that Everybody Counts Center for Independent Living ("Everybody Counts") violated the Indiana Access to Public Records Act ("APRA"), Indiana Code chapter 5-14-3. Specifically you claim that Everybody Counts denied you access to public records but failed to provide the statutory authority that allowed them to do so. Mr. Gregory A. Mitro, President of the Board of Directors for Everybody Counts responded in writing to your complaint. A copy of his response is enclosed for your reference.

It is my opinion that Everybody Counts did not deny you access to public records in violation of the APRA by failing to address your request to obtain copies of public records. Although I have some concerns about some of the statements made in response to your request, those statements do not constitute violations of the APRA.

BACKGROUND

According to your complaint and attachments, you made a public records request to Everybody Counts by mail in a letter dated May 11, 2001. In a letter dated, May 18, 2001 Mr. Mitro responded to your request. He listed several concerns with providing copies of the records you requested but ultimately stated that you were welcome to go to Everybody Counts and make copies of any records that you wanted. You contend that his response was a denial of public records in violation of the APRA. For this reason, you filed your complaint with this Office on May 23, 2001.

In response to your complaint, Mr. Mitro rejects your contention that Everybody Counts denied you access to public records. Mr. Mitro stated that your request arrived at their Office on May 15, 2001. At that time, the Executive Director of Everybody Counts was out of the office en route to a conference in Washington, D.C. After being contacted by the Assistant Director, however, Mr. Mitro asked that the request be sent to his home address for his response. On May 17, 2001, he received the request and sent a draft response to the staff person so she could type the letter and affix his signature with her initials. According to him, the staff person prepared the response and mailed it the next day because you provided no fax number or e-mail address. Mr. Mitro advised that the reason he did not reference a statutory reason for nondisclosure is because at no time was your request for records denied.

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." Ind. Code §5-14-3-1. According to Mr. Emas Bennett, Assistant Director of Everybody Counts, Everybody Counts is a public agency subject to the provisions of the APRA.

Any person has the right to inspect and copy the public records of Everybody Counts during regular business hours unless the public 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). A public agency may deny a written request for public records if the denial is in writing and the denial includes a reference to the specific statutory exemption that allows the record to be withheld and the name and title of the person responsible for the denial. Ind. Code § 5-14-3-9(c).

The APRA requires public agencies to make public records available for inspection and copying. According to your letter to Everybody Counts dated May 11, 2001, you requested copies of the following records:

1. All minutes and/or memoranda, from September 1, 1997, of the board of Directors, Executive Committee(s) and General Membership meetings (if you are a membership organization) through May 9, 2001.
2. All monthly, quarterly, semi-annual, and annual financial statements and reports including IRS Form 990 or 990 EZ with attachments, from September 1, 1997 through May 9, 2001 inclusive, with the exception of IRS Form 990 filed on August 8, 2000.
3. Copies of Indiana Department of Revenue Form IT-35AR, due on the 15th day of the 5th month following the end of your taxable year, for each year from 1997 through 2000 (filed in 2001) and 704 reports for the same time period.
4. A list of Officers, Board of Directors, and paid staff's names and addresses including salary.

According to Mr. Mitro's response to you, there was some concern about using too much staff time to deal with your request. Therefore, Everybody Counts decided to allow you to inspect, then copy on your own the records that you were seeking rather than using staff time to compile and copy the records that you requested.

It is my opinion that Everybody Count's failure to respond directly to your request to produce copies of documents for you was a denial under the APRA. This denial is actionable in the circuit or superior court in the county in which the denial occurred. Ind. Code § 5-14-3-9(d). In response to your request,

Everybody Counts should have stated that you would receive copies of the documents you requested but that it would take considerable time to do so given their staffing limitations. Then, as an alternative, Everybody Counts could have offered you the option of coming to the Center and inspecting and copying the records you wanted so that you could get them more quickly.

I would also like to take this opportunity to address some of the other concerns Mr. Mitro stated in his response to your public records request. First, Mr. Mitro stated that you did not provide the purpose of your request in your letter. Although it is not a violation of the APRA to ask for the purpose of a public records request, "no request may be denied because the person making the request refuses to state the purpose of the request, unless such condition is required by other applicable statute." Ind. Code § 5-14-3-3(a). Consequently, it is my opinion that public agencies should avoid asking for a requester's purpose in requesting the public records unless the agency is required to do so by statute.

Mr. Mitro also made reference to the fact that there was a concern that the sending the amount of records requested to a post office box is impossible. Although this may be a concern, it is not a concern that would allow Everybody Counts to withhold mailing copies of public records. The ability or inability for the Post Office to handle the amount of materials you requested is a concern for the Post Office, and not Everybody Counts.

Finally, Mr. Mitro referred to the fact that you did not clarify in what position, as Director Special Services of Paralyzed Hoosier Veterans or as Secretary of ICOIL you were requesting the records. Public records are generally available to anyone upon request, therefore, it is irrelevant in what capacity you were requesting the records. However, it is not a violation of the APRA to ask in what capacity you were requesting the records.

CONCLUSION

It is my opinion that Everybody Counts Center for Independent Living did deny you access to public records by failing to directly address your request for the production of copies of public records by that agency. This denial is actionable in court in the county in which the denial took place.

Sincerely,

Anne Mullin O'Connor

cc: Mr. Gregory Mitro, President of the Board of Directors,

Everybody Counts Center for Independent Living

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