



STATE OF INDIANA

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August 27, 2008

Jesse Turner
c/o John Emry
62 West Jefferson Street
Franklin, Indiana 46131

Re: Formal Complaint 08-FC-190; Alleged Violation of the Access to Public Records Act by the Johnson County Department of Planning and Zoning

Dear Mr. Turner:

This advisory opinion is in response to your formal complaint alleging the Johnson County Department of Planning and Zoning ("Department") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by denying you access to certified copies of records. It is my opinion the Department has violated the APRA.

BACKGROUND

You allege the Department violated the APRA by denying you access to certified records you first requested on or about July 30, 2008. You provide a copy of an electronic mail message exchange wherein Department officials indicated they would do what they could to provide you the records. You contend that while it is understandable the records might be in storage because of extensive flooding earlier this year, the denial appears to be a reluctance to certify the records. You filed this complaint on August 8, alleging you have been denied access to records.

My office sent a copy of the complaint to the Department on August 8 and invited the Department to respond. To date, this office has not received a response to the complaint.

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. The Department is clearly a public agency for the purposes of the APRA. I.C. § 5-14-3-2(m). Accordingly, any person has the right to inspect and copy the public records of the Department during regular business hours unless the public records are

excepted from disclosure as confidential or otherwise nondisclosable under the APRA. I.C. § 5-14-3-3(a).

You contend the Department is required to provide, upon request, certified copies of records it maintains. Nothing in the APRA expressly requires an agency to provide certified copies upon request. Instead, the APRA provides that “[a]ny person may inspect and copy the public records of a public agency . . .” I.C. § 5-14-3-3(a).

The fee provisions of the APRA, though, contemplate an agency charging a fee for certification of records. See I.C. § 5-14-3-8. Neither this provision nor any other provision in the APRA dictates how records are to be certified or whether every agency must offer certification.

As I recently indicated in *Opinion of the Public Access Counselor 08-FC-189*, this issue has been addressed previously by this office, in *Opinion of the Public Access Counselor 06-FC-65*, wherein Counselor Davis opined as follows:

The Prosecutor’s response that the records are “in the official custody” of other offices, and “the Prosecutor is not the custodian of the records” hints that the Prosecutor may maintain them but does not have the *official* records. To the extent that your request included a request for the *certified* copy of such records, such a response is understandable. A better response of the Prosecutor would have stated either: “We do not have this record, but you can find it at the Clerk’s office” or “We have the records, but if you want them to be certified, only the Clerk’s office can give you certified records; please advise whether you want our uncertified records.” *Id.*, available at <http://www.in.gov/pac/advisory/files/06-FC-65.pdf>.

Counselor Davis indicated that it is appropriate for an agency to direct a requester to the agency responsible for maintaining the official records if the requester wishes to obtain certified copies of the records. While I agree with that analysis and applied it to the issue in *Opinion 08-FC-189*, here I do not have the benefit of any information from the Department indicating whether the Department is the keeper of the records you have requested.

Certainly you are entitled to copies of the records the Department maintains (*See* I.C. § 5-14-3-3(a)), unless an exception to disclosure applies. While it is understandable the Department’s records may be difficult to locate or access because of the extensive flooding earlier this year, it is my opinion the Department should provide you with information regarding how or when access to the records may be obtained. It is my opinion the Department has violated the APRA by failing to provide you access to the records, information about when the records will be provided, or information regarding why the Department cannot provide you access to the records.

CONCLUSION

For the foregoing reasons, it is my opinion the Department has violated the APRA.

Best regards,



Heather Willis Neal
Public Access Counselor

Cc: Dan Batta, Director, Johnson County Department of Planning and Zoning