



STATE OF INDIANA

MICHAEL R. PENCE, Governor

PUBLIC ACCESS COUNSELOR
JOSEPH B. HOAGE

Indiana Government Center South
402 West Washington Street, Room W470
Indianapolis, Indiana 46204-2745
Telephone: (317) 234-0906
Fax: (317) 233-3091
1-800-228-6013
www.IN.gov/pac

July 18, 2013

Mr. Samuel Shaw
627 H Street
Bedford, Indiana 47421

Re: Formal Complaint 13-FC-195; Alleged Violation of the Access to Public Records Act by the Bedford Public Library

Dear Mr. Shaw:

This advisory opinion is in response to your formal complaint alleging the Bedford Public Library ("Library") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Susan Miller, Director, responded in writing to your formal complaint. Her response is enclosed for your reference.

BACKGROUND

In your formal complaint you allege that you were denied "payment information for vendors." You further provide that you are entitled to receive salary range information for each Library employee and the "total dollar amount invested in each staff department."

In response to your formal complaint, Ms. Miller advised that you were not denied Library vendor payment information. You made a request for a claims list or list of vendors by name, service provided, and amount paid. The Library does not maintain such a list. A list of all Library employees and their position has been provided. A list of salary ranges for each position is also to be provided. The Library does not maintain a record responsive to your request for "total dollar amount invested in each staff department" as the Library does not track costs in this manner. Ms. Miller further noted that your requests are difficult to read and comprehend; however the Library has done its best to comply with all request for records that you have submitted.

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 Library 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 Library'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 24 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 (7) 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 include information regarding how or when the agency intends to comply. Pursuant to section 9 of the APRA, when a request is made in writing and the agency denies the request, the agency must deny the request in writing and include a statement of the specific exemption or exemptions authorizing the withholding of all or part of the record and the name and title or position of the person responsible for the denial. *See* I.C. § 5-14-3-9(c).

"[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...."). Moreover, the APRA does not require a public agency to create a new record in order to satisfy a public records request. Here, the Library is not required to create a list in response to your request for a list of vendors by name, service provided, and amount paid. Further, the Library has provided that it does not maintain a record responsive to your request for the "total dollar amount invested in each staff department." As such, it is my opinion that the Library has not violated the APRA.

The APRA provides that that certain personnel records may be withheld from disclosure:

(b) Except as otherwise provided by subsection (a), the following public records shall be excepted from section 3 of this chapter at the discretion of a public agency:

(8) Personnel files of public employees and files of applicants for public employment, except for:

(A) the name, compensation, job title, business address, business telephone number, job description, education and training background, previous work experience, or dates of first and last employment of present or former officers or employees of the agency;

(B) information relating to the status of any formal charges against the employee; and

(C) the factual basis for a disciplinary action in which final action has been taken and that resulted in the employee being suspended, demoted, or discharged.

However, all personnel file information shall be made available to the affected employee or the employee's representative. This subdivision does not apply to disclosure of personnel information generally on all employees or for groups of employees without the request being particularized by employee name. I.C. § 5-14-3-4(b)(8).

In other words, the information referred to in (A) - (C) above must be released upon receipt of a public records request, but a public agency may withhold any remaining records from the employees personnel file at their discretion. The Library has provided to you a list of its employees and their position, along with the list of salary ranges for each position. A list of Library employee salary information is enclosed for your review, taken from the Indiana Gateway (<https://gateway.ifionline.org/>). It is my opinion that the Library has complied with the requirements of I.C. § 5-14-3-4(b)(8) in response to your request.

CONCLUSION

Based on the foregoing reasons, it is my opinion that the Library has not violated 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 "Hoage" at the end.

Joseph B. Hoage
Public Access Counselor

cc: Susan Miller