



STATE OF INDIANA
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July 19, 2013

Ms. Sandy S. Mattucci
506 E. Elm Street
Gaston, Indiana 47342

Re: Formal Complaint 13-FC-203; Alleged Violation of the Access to Public Records Act by the Town of Gaston

Dear Ms. Mattucci:

This advisory opinion is in response to your formal complaint alleging the Town of Gaston ("Town") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Our office forwarded a copy of your formal complaint to the Town on July 15, 2013. As of today's date, we have yet to receive a response. I have granted your request priority status pursuant to 62 Ind. Admin. Code 1-1-3(3).

BACKGROUND

In your formal complaint, you provide that you are seeking information from the Town as it pertains to the necessary permit needed to build an addition to your existing front porch. You submitted a request to the Town in order to inspect the applicable zoning ordinances regarding the issue. The Town provided that the cost for a copy of the zoning ordinance would be \$.10 per copy and the respective ordinance was not available for viewing online. Your request to inspect the ordinance was denied as you were informed that an employee would be required to be with you at all times during the inspection and because of the Town's reduced budget, an employee could not be made available. After filing your formal complaint, you submitted written correspondence that you were able to get in touch with one of the Town's Board members who connected you with the appropriate person in order to receive the correct permit.

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 Town 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 Town'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).

For public agencies that are not state agencies, the fee for copying documents may not exceed the greater of ten cents (\$0.10) per page for copies that are not color copies or twenty-five cents (\$0.25) for color copies; or the actual cost of to the agency of copying the document. *See* I.C. § 5-14-3-8(d). Actual cost means the cost of paper and the per-page cost for use of copying or facsimile equipment and does not include labor costs or overhead costs. *Id.* A fee established under this subsection must be uniform throughout the public agency and uniform to all purchasers. *Id.* A public agency may require that payment for copying costs be made in advance. *See* I.C. § 5-14-3-8(e). As applicable here, the Town would not violate the APRA by requiring the payment of the respective copy fee prior to production of records responsive to your request.

However, a public agency may not charge any fee under APRA to inspect a public record or to search for, examine, or review a record to determine whether the record may be disclosed. *See* IC 5-14-3-8(b). Generally, an individual has a right to inspect a record. *See Opinions of the Public Access Counselor 04-FC-43 & 04-FC-218.* However, circumstances may make inspection of a record impractical or impossible. *Id.* Counselor Kossack provided a summary of the issues presented here in a 2010 Informal Opinion:

“Previous public access counselors have opined that public agencies do not violate the APRA by denying the right to inspect records under certain circumstances. For example, in 2004, Counselor Hurst noted that “in some instances the option of inspection or copying may not be available.” *See Opinion of the Public Access Counselor 04-FC-43.* “[C]ircumstances may exist where physical inspection of a record is not practical or even possible, and reasonable access can only be accomplished through production of a copy of the record. Such is the case here.” *Id.* In that opinion, Counselor Hurst decided that it was not a violation of the APRA for a public agency to deny an offender’s request to inspect public records because the offender could not physically appear at the public agency during its normal business hours.

The APRA requires public agencies to maintain and preserve public records in accordance with applicable retention schedules. *See* I.C. § 5-14-3-4(h). A public agency shall protect public records from loss, alteration, mutilation, or destruction. *See* I.C. § 5-14-3-7(a). A public agency shall further take precautions that protect the contents of public records from unauthorized access, unauthorized access by electronic device, or alteration. *See* I.C. § 5-14-3-7(b).

Without the benefit of a response from the Town, it is difficult to determine why your request to inspect the requested record was denied. It is my opinion that the Town failed to meet its burden to demonstrate that your request to inspect was impractical or impossible and violated the APRA in denying said request.

CONCLUSION

For the foregoing reasons, it is my opinion that the Town did not violate the APRA by requiring the payment of the respective copy fee prior to the production of records responsive to your request. Further, it is my opinion that the Town failed to meet its burden to demonstrate that your request to inspect was impractical or impossible and violated the APRA in denying said request.

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 long, sweeping underline.

Joseph B. Hoage
Public Access Counselor

cc: Town of Gaston