

August 29, 2005

Julie A. Hively
9557 Shelbyville Road
Indianapolis, IN 46259

Re: Formal Complaint 05-FC-155; Alleged Violation of the Access to Public Records Act by the Johnson County Auditor

Dear Ms. Hively:

This is in response to your formal complaint alleging that the Johnson County Auditor (“Auditor”) violated the Access to Public Records Act (“APRA”) by denying your request for public records.

BACKGROUND

On July 28, 2005 you filed a formal complaint with the Office of the Public Access Counselor. Your complaint was assigned formal complaint # 05-FC-155. You allege that you made a request, to the Johnson County Animal Control Office, for access to bank statements for February 2005 to June 2005 and were denied access to those records. You then made your request to the Auditor. The Auditor told you that you could not have the records because you were an ex-employee. You were then told that because you were in litigation with Johnson County (“County”), you would have to request the records through your attorney. The Auditor provided you with a letter on July 27, 2005 stating that any record request must be made through your attorney. Finally, you state that the Auditor told you that anyone else could have the documents except for you.¹

¹ Prior to the filing of your complaint my office called to speak with the Auditor’s office regarding the requests made by you and your fiancé and was referred to Mr. Bill Hammon of the Johnson County Human Resources Department. Mr. Hammon stated that he did not deny the requests, but informed you or your fiancé that the requests would have to be reviewed by the County’s attorney. *He then stated that he had previously given the records to another person who had also requested them in writing.* When my office questioned whether the records could also be obtained by you or your fiancé by producing a written request Mr. Hammon stated that you couldn’t because the records had already been sent to the attorney. Then Mr. Hammon stated that he doesn’t have the records and didn’t know where they were. He then referred my staff attorney back to the Auditor’s Office. The Auditor stated that she did not have the requested records and did not know where they were, but that she would probably have to get copies from the bank. She also stated that the animal shelter might have the requested documents.

Mr. Jeffrey Eggers, Attorney for the Johnson County Board of Commissioners, responded to your complaint by letter dated August 12, 2005. A copy of that letter is enclosed for your reference. Mr. Eggers stated that the documents have been provided to you and/or your legal representative. He asserts that the delay in providing the records was due to confusion over whether a request for the documents should be made formally through the Indiana Trial Rules discovery procedures. He also states that, at the time the documents were requested, some of the documents were in the possession of the State Board of Accounts Examiner who was conducting an audit. He stated that other documents had to be retrieved from the Bank.

ANALYSIS

Any person may inspect and copy the public records of any public agency during the agency's regular business hours, except as provided in section 4 of the APRA. Ind. Code 5-14-3-3(a). For requests that are delivered in person, the agency must respond within twenty-four (24) hours. IC 5-14-3-9(a). If the request is received by mail, facsimile, or e-mail, the request must be responded to within seven calendar days. IC 5-14-3-9(b). A denial, if any, to a written request for records must be in writing and must include a statement of the specific exemption or exemptions authorizing the withholding of all or part of the public record, and the name and the title or position of the person responsible for the denial. IC 5-14-3-9(c). 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. IC 5-14-3-3(a).

The Auditor simply denied your request for records. On July 27, 2005 she provided you with a letter stating that you must obtain the requested copies through your attorney. She did not provide any exemption that authorized the withholding of the records. In fact, none of the exceptions listed in the APRA suggest that pending litigation is a basis for denial of access. *See generally*, IC §5-14-3-4. For this reason, it is my opinion that the Auditor's denial of your request, which was based on the fact that you have pending litigation against the County, was not a proper denial under the APRA and that this denial is actionable under IC 5-14-3-9(e).

Rather than deny your request, the Auditor could have provided you with a response acknowledging receipt of your request and providing an estimated time frame for when you could expect to receive the records you seek. The Auditor does have the opportunity to provide the documents within a reasonable time frame. She could consult with her attorney to determine whether the requested records are subject to an exemption from disclosure, so long as such consultation does not cause undue delay in producing the records. Likewise, if the whereabouts of the requested records are uncertain, the County may produce those documents within a reasonable time. However, the Auditor and the County must inform the requestor as to how long it will take to produce the records and provide a reasonable explanation for the delay. In this instance, it does not appear that the County was making reasonable efforts to provide you with the requested records.

Additionally, you have stated that you were told that others could obtain the requested records, but that you could not. This statement was repeated to my staff attorney by Mr. Hammer, of the Johnson County Human Resources Department, upon speaking with him prior to your filing of your complaint. As a records request may not be denied because the requestor

refuses to state the purpose of the request, it follows that the request may not be denied based upon the purpose if the purpose is known. *See* IC 5-14-3-3(a). In other words, you cannot be treated differently than other persons who request records based upon your relationship with the agency and your purpose in obtaining the records, except as provided by applicable law.

CONCLUSION

For the foregoing reasons, I find that the Johnson County Auditor violated the Access to Public Records Act when she denied your request for public records by requiring you to request the records through legal counsel. Additionally, I advise the Johnson County Auditor and Johnson County that they make every effort not to unreasonably delay the production of records requested under the Access to Public Records Act.

Sincerely,

Karen Davis
Public Access Counselor

cc: Jeffrey C. Eggers