



STATE OF INDIANA

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November 16, 2009

Ms. Sandy Alvarez
P.O. Box 161
Atlanta, IN 46031

Re: Formal Complaint 09-FC-239; Alleged Violation of the Access to Public Records Act by the Town of Atlanta

Dear Ms. Alvarez:

This advisory opinion is in response to your formal complaint alleging the Town of Atlanta ("Town") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* For the following reasons, it is my opinion that the Town did not violate the APRA.

BACKGROUND

In your complaint, you allege that you requested records regarding "salaries paid to employees or compensation to businesses that concerned the Atlanta Mercantile." You were informed by the Town's clerk-treasurer that the records were maintained not by the Town but by the Atlanta Women's League. You enclosed along with your complaint a copy of the accounts payable register dated September 22, 2009, which shows a temporary loan to fund a grant to Universal Construction for work done on the Atlanta Mercantile.

My office forwarded a copy of your complaint to the Town's clerk-treasurer, Robyn Emmert. Ms. Emmert's response is enclosed for your review. She states that the only document responsive to your request is the accounts payable register, which you have already obtained. Ms. Emmert further explains that the entry on the accounts payable register regarding the loan was a result of a grant that the Town received from the Hamilton County Convention and Visitor's Bureau ("HCCVB"). The purpose of that grant was for the Town to re-grant it to businesses located in the Town for façade improvements. The loan was granted to the construction contractor that performed the work pursuant to the grant. The payment was in the form of a loan because that arrangement allowed the Town to pay the contractors in a timely manner due to the HCCVB's practice of cutting its checks twice monthly.

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. Town does not dispute that it constitutes a public agency for the purposes of the APRA. I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy Town’s public records 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).

Here, it appears that the Town has already produced any and all responsive documents to you. To the extent that you are requested records that are maintained not by the Town but by the Atlanta Women’s League, the Town has not violated the APRA by failing to produce those records to you. “[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....”).

CONCLUSION

For the foregoing reasons, it is my opinion that Town did not violate the APRA.

Best regards,



Andrew J. Kossack
Public Access Counselor

Cc: Robyn Emmert, Clerk-Treasurer, Town of Atlanta