



STATE OF INDIANA

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November 19, 2009

Mr. Christopher D. Quay
The Courier-Journal
525 W. Broadway
Louisville, KY 40202

Re: Formal Complaint 09-FC-242; Alleged Violation of the Access to Public Records Act by the Community Foundation of Southern Indiana

Dear Mr. Quay:

This advisory opinion is in response to your formal complaint alleging the Community Foundation of Southern Indiana ("CFSI") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Because CFSI is not a "public agency" within the meaning of the APRA, it is my opinion that it did not violate the APRA.

BACKGROUND

In your complaint, you allege that the CFSI violated the APRA by denying you access to records regarding financial contributors. In response to your allegations, CFSI President and Chief Executive Officer Mike Waiz argues that CFSI is not a "public agency" as defined by the APRA in Indiana Code section 5-14-3-2(m). Mr. Waiz states that CFSI is an Indiana nonprofit corporation classified by the IRS as a public charity exempt from taxation. Mr. Waiz does not believe CFSI is subject to the requirements of the APRA.

ANALYSIS

A "public agency" for purposes of the APRA is defined in Indiana Code section 5-14-3-2. The burden of proving that an entity is a "public agency" within the meaning of the APRA is on the person asserting his rights under the APRA. *Perry County Dev. Corp. v. Kempf*, 712 N.E.2d 1020, 1023 (Ind. Ct. App. 1999). Generally, not-for-profit corporations are not considered public agencies. However, the APRA defines as a public agency any entity that is subject to audit by the state board of accounts ("SBOA"). I.C. § 5-14-3-2(m)(3)(B). Under Indiana Code section 5-11-1-9, not-for-profit entities (among

other entities) may be subject to audit by the SBOA under certain conditions. The determination of whether an entity is subject to audit is the sole responsibility of the SBOA. *See Opinion of the Public Access Counselor 05-FC-117.* I contacted the SBOA to inquire whether the CFSI is subject to audit. According to Tammy Baker of the SBOA's not-for-profit division, CFSI is not subject to audit by the SBOA. Consequently, it is my opinion that CFSI is not a public agency within the meaning of the APRA. If an entity is not a public agency, it does not come within the ambit of APRA and has no duty to comply with it.

CONCLUSION

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

Best regards,

A handwritten signature in black ink that reads "Andrew J. Kossack". The signature is written in a cursive, slightly slanted style.

Andrew J. Kossack
Public Access Counselor

cc: Mike Waiz, The Community Foundation of Southern Indiana