



STATE OF INDIANA

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February 2, 2011

Ms. April D. Stuttle
905 S. Main St.
Jonesboro, IN 46938

Re: Formal Complaint 11-FC-05; Alleged Violation of the Access to Public Records Act by the City of Jonesboro

Dear Ms. Stuttle:

This advisory opinion is in response to your formal complaint alleging the City of Jonesboro (the "City") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* The City's response is enclosed for your reference.

BACKGROUND

According to your complaint, you requested access to the policy that authorizes City employees and officials to use of the City's Community Building at no cost, as well as the log sheet that tracks dates the Community Building was rented and amounts paid for such rentals. In response, the City's billing clerk, Kim Windle, informed you that her computer cannot print such information. You requested to view the information on her computer and take notes, but Ms. Windle stated that she "deletes such information when she wants to."

In response to your complaint, City Clerk-Treasurer Karen Owen states that the City does not retain a log of Community Building reservation dates. If someone makes a reservation, an entry is made on a "calendar reminder program" with a telephone number to call in case of emergencies. That calendar is removed each month and replaced with a new calendar. The City does not retain a calendar history and the program has no print capability. Ms. Owen notes that what the City does retain, however, is the set of receipts from the revenue reports on the building rentals. She states that you have "every right" to request to inspect those records, but claims that you have refused to see the revenue reports. She also claims that there is no recorded or retained policy regarding rental of the building; its use is up to the discretion of the mayor.

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. The City is a “public agency” under the APRA. I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy the City’s public records during regular business hours unless the public records are excepted from disclosure as nondisclosable under the APRA. I.C. § 5-14-3-3(a).

Generally, if a public agency has no records responsive to a public records request, the agency does not violate the APRA by denying the request. “[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....”). Thus, if the City never created a policy regarding use of the Community Building, it did not violate the APRA by failing to provide you with such a policy.

With respect to your request for the rental logs, the APRA requires public agencies to maintain and preserve public records in accordance with applicable retention schedules. See I.C. § 5-14-3-4(e). Ms. Owen states that the City’s calendar entries for building rentals are deleted on a monthly basis. So long as such records were disposed of in accordance with an applicable retention schedule, the City did not violate the APRA. The City should, however, permit you to inspect and copy whatever calendars the City maintains upon request. In other words, if a certain calendar entry has not yet been deleted, it should be available for inspection and copying. I agree that a public agency need not permit a requester to view records on an agency’s computer screen if there are, for example, concerns about the security of the agency’s records. See I.C. § 5-14-3-7(a). If the City will not allow such access and also cannot print a copy of the calendar entry, access to the record could be achieved by providing a copy of electronic data under Ind. Code § 5-14-3-8(g).

CONCLUSION

For the foregoing reasons, it is my opinion that the City did not violate the APRA if it failed to provide you with records that the City disposed of in accordance with applicable retention schedules. The City should provide you with calendar entries for the Community Building that the City has not yet deleted unless the City can cite to an exemption in section 4 of the APRA that justifies nondisclosure.

Best regards,

A handwritten signature in black ink that reads "Andrew J. Kossack". The signature is written in a cursive style with a large, sweeping initial 'A'.

Andrew J. Kossack
Public Access Counselor

cc: Karen Owen