



STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

PUBLIC ACCESS COUNSELOR
ANDREW J. KOSSACK

Indiana Government Center South
402 West Washington Street, Room W470
Indianapolis, Indiana 46204-2745
Telephone: (317)233-9435
Fax: (317)233-3091
1-800-228-6013
www.IN.gov/pac

February 15, 2011

Ms. Nancy Garbrecht
6170 Joliet Rd., Suite 200
Countryside, IL 60525

Re: Formal Complaint 11-FC-30; Alleged Violation of the Access to Public Records Act by the Kankakee-Iroquois Regional Planning Commission

Dear Ms. Garbrecht:

This advisory opinion is in response to your formal complaint alleging the Kankakee-Iroquois Regional Planning Commission ("Commission") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.*. My office forwarded a copy of your complaint to the Commission, but we did not receive a response.

BACKGROUND

According to your complaint, you sent two emails to Kimberly Baker at the Commission requesting copies of certified payrolls for "Fire Station Projects" located in Brook and Remington, Indiana. You attached email receipts to your complaint and claim that Ms. Baker received your emails but failed to respond.

ANALYSIS

A request for records may be oral or written. I.C. §5-14-3-3(a); §5-14-3-9(c). If the request is delivered by email, mail, or facsimile and the agency does not respond to the request within seven (7) days of receipt, the request is deemed denied. I.C. §5-14-3-9(b). If the request is delivered in person and the agency does not respond within 24 hours, the request is deemed denied. I.C. §5-14-3-9(a). A response from the public agency could be an acknowledgement that the request has been received and information regarding how or when the agency intends to comply. Thus, if the Commission failed to respond to your emailed request within seven days of receiving it, the APRA deems your request denied. Under the APRA, when a request is made in writing and the agency denies the request, the agency must deny the request in writing and must include a statement of the specific exemption or exemptions authorizing the withholding of all or part of the record and the name and title or position of the person responsible for the

denial. I.C. § 5-14-3-9(c). Consequently, the Commission's failure to deny your request in accordance with subsection 9(c) violated the APRA.

Without the benefit of a response from the Commission, it is unclear to me why your request was denied. The visitation records you requested may very well be confidential or otherwise nondisclosable. However, under the APRA, a public agency that withholds a public record bears the burden of proof to show that the record is exempt. I.C. §§ 5-14-3-1, 5-14-3-9(f) and (g). Exceptions to disclosure are narrowly construed. I.C. § 5-14-3-1. Because the Commission has not provided a justification for withholding the records at issue here, it is my opinion that the Commission has failed to sustain its burden. If the Commission cannot justify withholding the records under the APRA, I encourage the Commission to release the records to you. To the extent the Commission persists in its denial of access following the issuance of an advisory opinion from this office and you believe the Commission is in violation of the APRA, I leave you to your remedies before a court pursuant to Ind. Code § 5-14-3-9(e).

CONCLUSION

For the foregoing reasons, it is my opinion that if the Commission failed to respond to your request, the Commission violated section 9 of the APRA. If the Commission cannot cite to a statutory basis for withholding the records you requested, the Commission should release them to you as soon as practicable.

Best regards,



Andrew J. Kossack
Public Access Counselor

cc: Kimberly Baker