



# 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](http://www.IN.gov/pac)

May 6, 2011

Mr. Victor A. Spina  
309 Illinois Street  
Martinsville, IN 46151

*Re: Formal Complaint 11-FC-91; Alleged Violation of the Access to Public Records Act by the City of Martinsville*

Dear Mr. Spina:

This advisory opinion is in response to your formal complaint alleging the City of Martinsville ("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

In your complaint, you allege that the City denied your records request for copies of the City's payments to City Engineer Ross Holloway by City Clerk-Treasurer Mary Peden. Ms. Peden informed you that the denial was "ordered" by attorney Roger Coffin. You note that you are running for mayor and allege that "those in power now are trying to intimidate and prevent [you] of [your] rights [under the APRA]."

In response to your complaint, Ms. Peden states that you owe the City "a rather large amount for copies that were ordered on [your] behalf by [your] attorney" and you have refused to pay that bill. As a result, she initially held up the release of your records until that bill was paid. Later, "[n]ot wanting to create trouble, [Ms. Peden] decided that if the request were made by [your] brother . . . [she] would release the information which [she] did."

## 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 does not contest that it is 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 the

City's public records during regular business hours unless the records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. I.C. § 5-14-3-3(a).

Here, the issue is whether the City violated the APRA by refusing to release records to you until you pay your outstanding copy fee balance. The APRA permits a public agency to charge a fee for copies of public records, and a public agency may require a person to pay the copying fee in advance. IC 5-14-3-8(e). Nothing in the APRA requires that a public agency waive a copying fee. *See Opinion of the Public Access Counselor 07-FC-124*. Consequently, in my opinion the City did not violate the APRA by holding your records until it received the appropriate fees. Moreover, it is my understanding that the City ultimately released the requested records to your brother, who was acting on your behalf. I trust this satisfies your complaint.

#### CONCLUSION

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

Best regards,



Andrew J. Kossack  
Public Access Counselor

cc: Mary Lou Peden