



STATE OF INDIANA

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February 15, 2012

Kara M. Kenney
WRTV 6
1330 North Meridian
Indianapolis, Indiana 46202

Re: Formal Complaint 12-FC-25; Alleged Violation of the Access to Public Records Act by the Harrison Township Fire Department

Dear Ms. Kenney:

This advisory opinion is in response to your formal complaint alleging the Harrison Township Fire Department ("Department") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Chief David Allison responded on behalf of the Department. His response is enclosed for your reference.

BACKGROUND

In your formal complaint you allege that in early January 2012, you contacted the Department seeking information on the new fire station and headquarters. After receiving no response to your oral requests, you submitted a written request on or about January 3, 2012. As of January 23, 2012, the date you filed your formal complaint with the Public Access Counselor's Office, you further allege that you have not received a response from the Department.

In response to your formal complaint, Mr. Allison advised that he did receive your call in which you requested information on the Department's proposed new building. On the same day of receipt of your message, Mr. Allison contacted WRTV on three separate occasions and asked to speak with you. On each occasion, he received your voice mail. On the third attempt, Mr. Allison left a voice mail and provided that that you should contact Marbaugh Reprographic for the information that was sought as the Department did not have copies of the information. Mr. Allison informed you that he believed that the cost for the complete package would be \$95.00. As to your written request, Mr. Allison advised that the Department did not receive your written request. Again, Mr. Allison provided that copies of the records that were sought are available upon receipt of payment.

ANALYSIS

The public policy of the APRA states that “(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.” *See* I.C. § 5-14-3-1. The Department is a public agency for the purposes of the APRA. *See* I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy the Department’s public records during regular business hours unless the records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. *See* I.C. § 5-14-3-3(a).

A request for records may be oral or written. *See* I.C. § 5-14-3-3(a); § 5-14-3-9(c). If the request is delivered in person and the agency does not respond within twenty-four hours, the request is deemed denied. *See* I.C. § 5-14-3-9(a). If the request is delivered by mail or facsimile and the agency does not respond to the request within seven days of receipt, the request is deemed denied. *See* I.C. § 5-14-3-9(b). 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 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. *See* I.C. § 5-14-3-9(c). 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.

The public access counselor is not a finder of fact. Advisory opinions are issued based upon the facts presented. If the facts are in dispute, the public access counselor opines based on both potential outcomes. *See Opinion of the Public Access Counselor 11-FC-80*. Here the parties’ version of the events that transpired regarding the request for records varied greatly. As to your oral request, you provide that the Department failed to respond to your request in any fashion. Mr. Allison advised that he responded to the oral request and left a voicemail message for you detailing how to access the information that was sought. Accordingly, if the Department failed to respond to your oral request for records within twenty-four hours, it violated the APRA. But, if the Department responded to your oral request by leaving a message on your voicemail within twenty-four hours of its receipt, it did act contrary to the APRA. As to your written request, the Department maintains that it did not receive a written request from you. If the Department did not receive your written request, it was not obligated to respond to it. However, if the Department received your written request and failed to respond to it within seven days of receipt, it violated the APRA.

The APRA permits a public agency to charge a fee for copying a record, but sets certain limits on the amount of the copying fee depending upon the type of public agency. *See* I.C. § 5-14-3-8. The fee for copying documents may not exceed \$.10 per page for copies that are not color copies or \$.25 per page for color copies; or the actual cost to the agency of copying the document. *See* I.C. § 5-14-3-8(d)(1)-(2). “Actual cost” means the cost of paper and the per-page cost for use of copying or facsimile equipment and does



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not include labor costs or overhead costs. *See* I.C. § 5-14-3-8(d)(2). A public agency may require a person to pay the copying fee in advance. *See* I.C. 5-14-3-8(e). However, a public agency may not charge any fee under APRA to inspect a public record or to search for, examine, or review a record to determine whether the record may be disclosed. *See* IC 5-14-3-8(b).

With respect to the electronically stored records, the APRA sets forth several provisions with respect to the fee for providing the records. A public agency may charge a person who makes a request for disclosable information the agency's direct cost of reprogramming a computer system if:

- (1) the disclosable information is stored on a computer tape, computer disc, or a similar or analogous record system; and
- (2) the public agency is required to reprogram the computer system to separate the disclosable information from nondisclosable information. *See* IC 5-14-3-6(c).

"Direct cost" means one hundred five percent (105%) of the sum of the cost of:

- (1) the initial development of a program, if any;
- (2) the labor required to retrieve electronically stored data; and
- (3) any medium used for electronic output; for providing a duplicate of electronically stored data onto a disk, tape, drum, or other medium of electronic data retrieval under section 8(g) of this chapter, or for reprogramming a computer system under section 6(c) of this chapter. *See* IC 5-14-3-2(c).

Although I am not aware of what specific information that was sought from the Department regarding the proposed new building, the Department would be required to comply with the provisions of the APRA regarding any fees charged for copies of records that were responsive to your request.

CONCLUSION

For the foregoing reasons, it is my opinion that if the Department failed to respond to your oral request within twenty-four hours, it violated the APRA. However, if the Department responded to your oral request within twenty-four hours by providing information regarding the records that were sought, it did not act contrary to the APRA. If the Department did not receive your written request, it was not obligated to respond to it. But, if the Department received your written request and failed to respond in writing within seven days, it violated the APRA.

Best regards,

A handwritten signature in black ink, appearing to read "J. Hoage". The signature is written in a cursive style with a large initial "J" and a long, sweeping underline.

Joseph B. Hoage
Public Access Counselor

cc: Chief Dave Allison