



STATE OF INDIANA

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June 16, 2009

Thomas Mason
4800 South 930 East
Wolcottville, Indiana 46795-9799

Re: Formal Complaint 09-FC-137; Alleged Violation of the Access to Public Records Act by the LaGrange County Auditor's Office

Dear Mr. Mason:

This advisory opinion is in response to your formal complaint alleging the LaGrange County Auditor's Office ("Auditor") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by denying you electronic access to records. The Auditor's response to the complaint is enclosed for your reference. It is my opinion the Auditor has provided you access to inspect and copy the requested records and has not violated the APRA.

BACKGROUND

You allege that on May 4, 2009 you requested from the Auditor copies of attorney fee invoices submitted by the law firm Beers Mallers Backs & Salin, LLP. You received an electronic mail message from the Cassy Zuver of the Auditor's office on May 11, wherein Ms. Zuver indicated the records would be sent to you via electronic mail. You further allege that on June 1 you spoke to Ms. Zuver who indicated the Commissioners will no longer allow the Auditor's office to send records via electronic mail. You filed the present complaint on June 1.

The Auditor responded to the complaint by letter dated June 16 from attorney Kurt Bachman. Mr. Bachman, on behalf of the County, contends the County has not denied you access to the records. The County explains that after reviewing the records responsive to your request, the Auditor discovered the response constituted 169 pages of records, and those records are not maintained in electronic format. Mr. Bachman contends that his office sent you a letter dated May 21, indicating to you that the 169 pages of records were available for inspection and copying during regular business hours. The letter indicated you could contact Ms. Zuver to arrange a time for inspection and copying. The County contends that since May 21 you have been in the office at least twice to

submit at least five additional requests for access to records and that on neither of those visits did you retrieve or inspect the invoice records.

The County contends that the records you have requested are maintained in paper files and not in electronic format. The County contends it is not required to provide the records in electronic format.

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 Auditor is clearly a public agency for the purposes of the APRA. I.C. § 5-14-3-2(m). Accordingly, any person has the right to inspect and copy the public records of the Auditor during regular business hours unless the public records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. I.C. § 5-14-3-3(a).

The County does not argue that the records you have requested are subject to disclosure. To the contrary, the County has offered to make the requested records available to you for inspection and copying and has provide you contact information for Ms. Zuver, who can assist you in making arrangements to do so.

You argue that the County is required to provide the requested records in electronic format and send them to you by electronic mail. As the County contends, this office has opined that "a public agency is under no obligation to maintain its records in any particular manner, and it is under no obligation to create a record that complies with the requesting party's request." *Opinion of the Public Access Counselor 04-FC-38*.

The records to which you have requested records are maintained in paper format. The APRA provides that an agency must make reasonable efforts to provide records in the medium requested, when those records are maintained in an electronic data storage system. *See* I.C. § 5-14-3-3(d). Here, though, the records to which you have requested access are not maintained in an electronic data storage system. They are maintained as paper records. Nothing in the APRA requires the County to convert those records from paper to electronic format solely to satisfy your request.

In my opinion, the County has fulfilled its obligation under the APRA by responding to your request in the time required by the statute and by agreeing to make the records available for inspection and copying. The onus is now on you to contact the Auditor's office to make arrangements to inspect and copy those records. The County has not violated the APRA by refusing to convert the records to another format.

CONCLUSION

For the foregoing reasons, it is my opinion the Auditor has provided you access to inspect and copy the requested records and has not violated the APRA.

Best regards,



Heather Willis Neal
Public Access Counselor

Cc: Kurt Bachman, Beers Mellers Backs & Salin, LLP