



STATE OF INDIANA

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June 14, 2011

Ms. Sharon K. Howell
Town of Avon
6570 E. U.S. Highway 36
Avon, IN 46123

Re: Informal Inquiry 11-INF-32; Records of the Town of Avon

Dear Ms. Howell:

This is in response to your informal inquiry regarding Town of Avon ("Town"). Pursuant to Ind. Code § 5-14-4-10(5), I issue the following opinion in response to your inquiry. My opinion is based on applicable provisions of the Access to Public Records Act ("APRA"), I.C. § 5-14-3-1 *et seq.* and other relevant statutes.

Your inquiry seeks advice regarding the records requests made of the Town of Avon by a Town Councilman. You claim that on March 24, 2011, Town Councilman David Jackson made a records request for "a CD-ROM of the data files for the Town of Avon financial records the Town maintains through specific software [he] refers to as data dictionary." On April 14, 2011, Mr. Jackson made his second records request for "memos provided by [him] to council members and copied to you and the Town Manager in July 2005 regarding BUCS data extracts worked on." You advise that although the Town does not utilize the software Mr. Jackson references, you sent him responsive documents that "contained trial balances of all transaction from January 1, 2011 through February 28, 2011." You claim that the documents provided were selected for production because they did not contain confidential tax identification numbers. You inquire as to whether the Town's response to Mr. Jackson's first request was appropriate under the APRA, as well as input as to the disclosure of documents relative to Mr. Jackson's second request for memos.

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." I.C. § 5-14-3-1. The Town 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 Town's public records during regular business hours unless the records are excepted from disclosure as confidential or nondisclosable under the APRA. I.C. § 5-14-3-3(a).

As an initial matter, I note that the APRA does not make a distinction between APRA requests made by public officials and APRA requests made by members of the general public or news media. *See* I.C. § 5-14-3-3. Consequently, the following analysis would apply to anyone making a request for the Town's financial records and is not confined to members of the Town Council. If the Town Council enjoys any rights to access this information beyond those provided in the APRA due to the nature of the Council's relationship with the Town, such rights are an internal matter for the Town Council itself and beyond the scope of my advisory authority as the public access counselor. *See* I.C. § 5-14-4-4(10).

I also note that this dispute concerns access to a record that is alleged to be stored electronically. The APRA contains special provisions regarding such records. *See* I.C. § 5-14-3-3(a). Specifically, the APRA requires that "a public agency that maintains . . . public records in an electronic data storage system shall make reasonable efforts to provide to a person making a request a copy of all disclosable data contained in the records on paper, disk, tape, drum, or any other method of electronic retrieval if the medium requested is compatible with the agency's storage system." *Id.* Thus, the APRA requires the Town to make "reasonable efforts" to provide a copy of the financial reports, but it does not require that the Town grant Mr. Jackson electronic access to the reports. If the records contain disclosable and nondisclosable information, the agency shall, upon receipt of a request, separate the material that may be disclosed and make it available for inspection and copying. You concede that while the Town does not utilize the software that Mr. Jackson references, the Town has provided records responsive to his request. Nothing under the APRA requires an agency to use specific software to retrieve records. If an agency has access to those records, and can produce a copy, then a copy must be provided absent any exception under the APRA. If the Town has provided documents responsive to Mr. Jackson's request, separating information that is nondisclosable from disclosable, then the Town is not in violation of the APRA.

You also seek information as to the disclosure of records in response to Mr. Jackson's second request. In his second request, Mr. Jackson sought records of "memos that were provided to council members in July 2005 regarding BUCS data extracts that [he] worked on." Under the APRA, a "public record" includes any material that is "created, received, retained, maintained, or filed by or with a public agency." I.C. § 5-14-3-2(m). These memos appear to be filed with the Town Council, and as such, would presumably be disclosable unless an exemption to the APRA applies. Absent any exception, the memos would need to be disclosed. Because I do not know the content of these memos, there may be some information included therein that needs to be redacted before disclosure. If the Town does possess the memos requested, I urge them to either produce them or cite a specific statutory exemption that authorizes the Town to withhold them.

If I can be of additional assistance, please do not hesitate to contact me.

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