

November 27, 2006

Sent Via Facsimile

Monika A. Spaulding
The Salem Leader
117-119 E. Walnut Street
Salem, IN 47167

Re: Formal Complaint 06-FC-189; Alleged Violation of the Access to Public Records Act by the Washington County Memorial Hospital

Dear Ms. Spaulding:

This is in response to your formal complaint alleging that the Washington County Memorial Hospital (“Hospital”) violated the Access to Public Records Act (“APRA”) by failing to provide within a reasonable period of time the financial reports discussed at a public meeting of the Hospital Board. I find that the Hospital did not provide the record within a reasonable period of time.

BACKGROUND

You allege that you requested copies of the financial reports given at the August and September public meetings of the Hospital Board. You called on Monday, October 9 to the Chief Operating Officer and Vice President of Communications Jim Steggeman to request the records. He told you that he would meet with the Chief Financial Officer to discuss the request and get back with you. The next day, you received a telephone call from Public Relations Director Greg White. He told you that you could pick up the information at the next public board meeting set for Thursday, October 26. When you expressed your need for the information sooner than October 26, Mr. White told you he would pass along your concern to the Hospital, but as of the date you filed your formal complaint, October 13, you had not heard from the Hospital. You claim that the Hospital’s lack of explanation for why the record could not be provided before October 26 and the delay of three weeks is not in compliance with the Access to Public Records Act.

I sent a copy of your complaint to the Hospital. Hospital attorney James B. Hogan responded by letter, a copy of which is enclosed for your reference. Mr. Hogan acknowledges that the Hospital is a county hospital organized under IC 16-22-2, and therefore a public agency for purposes of the APRA. He asserts that the Hospital has satisfied the requirements of the APRA. First, the Hospital provided a response within 24 hours stating that the records would be disclosed. Also, the Hospital did not unreasonably delay production of the records. The Hospital's offer to provide access to you at the next scheduled public meeting in no way violated the APRA, particularly given that the information sought was initially conveyed orally and did not exist in a condensed, written form.

The Hospital cited five factors that are considered when determining whether the records have been timely produced. These factors include the number of documents sought, whether the requested documents contain disclosable and nondisclosable information, whether the documents require review by counsel, whether the agency has limited, part-time staff, and the existence of special conditions limiting the resources of the agency. When considering the information sought was conveyed orally and not originally existing in a written form, that you were present at the meetings when the information was discussed, and the five factors that are relevant to the determination of the reasonable time in which to produce records, the offer to provide access on October 26 was done in good faith and was reasonable.

I spoke with you after receiving the Hospital's response. You confirmed that the information you requested was the information that was contained in the packet that is given to the Board at each meeting. You told me that during the presentation of the financial report by the Chief Financial Officer to the Board, the CFO refers to the material in the Board packet. You also told me that you did receive the record at the October 26 Board meeting (via your representative). Upon contacting a Board member to gain insight into the one-page report that you received, the Board member told you that the document was the same one that the Board had before it at the public Board meeting.

ANALYSIS

Any person may inspect and copy the public records of any public agency, except as provided in section 4 of the Access to Public Records Act ("APRA"). Ind. Code 5-14-3-3(a). If a public agency receives a request for a record in person or by telephone, the public agency is required to respond within 24 hours or the record is deemed denied. IC 5-14-3-9(a). If the public agency receives a request for a record via U.S. Mail or facsimile, the public agency is required to respond within seven calendar days, or the request is deemed denied. IC 5-14-3-9(b). A public agency is not required to compile or create a record to satisfy a person's request for information. Rather, the APRA requires that a public agency make available its current records.

There are no specific timeframes within which a record must be produced. This office has stated on many occasions that the public agency should make its records available for inspection and copying within a reasonable period of time, under the facts and circumstances. Common considerations will include the number of records that must be compiled, whether the request contains general descriptions of records, any special limitations of manpower in the

public agency, and whether the information must be reviewed by counsel or redacted to remove nondisclosable information.

The Hospital timely responded to your telephoned request, since the Hospital notified you within 24 hours that it would provide the records. In its complaint response, the Hospital cites the above factors regarding timely production, but makes no assertion that any of these circumstances applied to your particular request. You have told me that the record you received from the Hospital was one page. If the record was prepared specifically for your request in a condensed form, you did not request that it be so prepared. You requested only the documentation that the Board appeared to review during the public meetings. The fact that the information was *conveyed* orally does not answer the question whether a document existed at the time of the public meetings that was responsive to your request.

If the record you received was substantially the same, or the same, record that the Board was given at the public meetings, it is my opinion that the delay of nearly three weeks from your request was unreasonable, given the lack of any justification taking into account the facts and circumstances of this request. I hold the same opinion if the documentation provided to the Board was in several different documents, where you did not appear to ask that the documentation be pulled together in any particular format. I would also observe that the Hospital making the record available at the next Board meeting appears to be an artificial timeframe, because the date of Board meetings would seem to bear no relation to the time for the Hospital to compile, redact, or copy a record.

CONCLUSION

For the foregoing reasons, I find that the Hospital unreasonably delayed production of the financial reports presented in the Hospital Board's public meetings.

Sincerely,

Karen Davis
Public Access Counselor

cc: James B. Hogan