



STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

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August 26, 2010

Mr. Mark O'Dell
726 Broadway
Chesterton, IN 46304

Re: Formal Complaint 10-FC-168; Alleged Violation of the Access to Public Records Act by the Damon Run Conservancy District

Dear Mr. O'Dell:

This advisory opinion is in response to your formal complaint alleging the Damon Run Conservancy District (the "District") violated the Access to Public Records Act ("APRA"), I.C. § 5-14-3-1 *et seq.* The District's response to your complaint is enclosed for your review.

BACKGROUND

In your complaint, you allege that on July 9, 2010, you sent a records request via facsimile to the District's secretary, Jennifer Beauchamp. On July 19th, you received a telephone call from the District's attorney, William Ferngren, who left a message informing you that he had questions about your request. You claim that you attempted to return Mr. Ferngren's call, but you had to leave a voicemail. You received a letter from Ms. Beauchamp on July 20th requesting certain records from you. You believe that the District denied your request because it failed to produce your requested records for more than 17 days. Moreover, you believe that the contacts from the District's attorney and the records request from Ms. Beauchamp are intended to get you to "back down" from your request.

In response to your complaint, Mr. Ferngren disputes that the District ever denied your request. Rather, he states that the records you requested are now available for you to inspect in his office. The District could not immediately make the records available to you because the District does not own office space and its records are maintained in several different locations. The breadth of your request required the District to assemble the records in one location to determine what records were responsive to your request. Mr. Ferngren attempted to contact you in an attempt to narrow the scope of your request so that the District could respond to your request in the most efficient manner possible.

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 District does not contest that it is a “public agency” under the APRA. I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy the District’s public records during regular business hours unless the public records are excepted from disclosure as nondisclosable under the APRA. I.C. § 5-14-3-3(a).

A request for records may be oral or written. I.C. §5-14-3-3(a); §5-14-3-9(c). If the request is delivered by mail or facsimile and the agency does not respond to the request within seven (7) days of receipt, the request is deemed denied. I.C. § 5-14-3-9(b). If the request is delivered in person and the agency does not respond within 24 hours, the request is deemed denied. I.C. §5-14-3-9(a). 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. Here, there is some dispute about when the District actually responded to your request because Mr. Ferngren states that he attempted to contact you numerous times. Moreover, because Mr. Ferngren states that the District does not own office space, I cannot assume that the District received your request on the day that you sent it. Suffice it to say that if the District did not respond to your written request within seven (7) days of receiving it, the District violated the APRA.

As far as your allegation that the District violated the APRA by failing to produce your records sooner, the APRA does not prescribe deadlines regarding the actual production of public records responsive to an APRA request. However, the public access counselor has repeatedly stated that records must be produced within a reasonable period of time, considering all of the facts and circumstances. Considering factors such as the nature of the requests (whether they are broad or narrow), how old the records are, and whether the records must be reviewed and edited to delete nondisclosable material is necessary to determine whether the agency has produced records within a reasonable timeframe. The ultimate burden lies with the public agency to show the time period for producing documents is reasonable. *See Opinion of the Public Access Counselor 02-FC-45.*

Here, the District has assembled your records and is prepared to release them to you. Mr. Ferngren states that the District took some time to do so due to the fact that the records were maintained in several different locations, and because the District was attempting to contact you to ask you if you would be willing to narrow the request. In my opinion, the District’s delay for these reasons was reasonable, and I trust the fact that the District has procured the records and made them available to you resolves your complaint.

CONCLUSION

For the foregoing reasons, it is my opinion that if the District failed to respond to your written request within seven (7) days, the District violated the APRA. However, the District has not otherwise violated the APRA.

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

Cc: William Ferngren