



STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

PUBLIC ACCESS COUNSELOR
ANDREW J. KOSSACK

Indiana Government Center South
402 West Washington Street, Room W470
Indianapolis, Indiana 46204-2745
Telephone: (317)233-9435
Fax: (317)233-3091
1-800-228-6013
www.IN.gov/pac

November 29, 2010

Ms. April D. Stuttle
905 S. Main St.
Jonesboro, IN 46938

Re: Formal Complaint 10-FC-264; Alleged Violation of the Access to Public Records Act by the City of Jonesboro

Dear Ms. Stuttle:

This advisory opinion is in response to your formal complaint alleging the City of Jonesboro (the "City") violated the Access to Public Records Act ("APRA"), I.C. § 5-14-3-1 *et seq.* The City's response from Clerk-Treasurer Karen Owen is enclosed for your review.

BACKGROUND

In your complaint, you allege that you submitted a request to Ms. Owen for "minutes of meetings, all employees on the city payroll with amounts of each name and salaries, and some budgets." Ms. Owen asked why you wanted the information, but you refused to answer. Ms. Owen later denied your request for salary amounts with employee names, and she informed you that she would "have to get special paper" before you could have the meeting minutes you requested.

In response to your complaint, Ms. Owen states that her reasoning for asking for your intentions in requesting the information was to ascertain the easiest manner in which to provide the material. She notes that documents are "multi-filed" in her office, so she wanted to narrow your request to those records relevant to what you were seeking. She notes that some documents you requested either do not exist or are not available in the form you requested. No lists of individual salaries are kept by the City. Further, the City's practice is to not release draft meeting minutes until they are in their complete and final form.

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 City 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 City’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).

Regarding minutes and memoranda, the Open Door Law provides the following:

- (b) As the meeting progresses, the following memoranda shall be kept:
 - (1) The date, time, and place of the meeting.
 - (2) The members of the governing body recorded as either present or absent.
 - (3) The general substance of all matters proposed, discussed, or decided.
 - (4) A record of all votes taken, by individual members if there is a roll call.
 - (5) Any additional information required under IC 5-1.5-2-2.5.
- (c) The memoranda are to be available within a reasonable period of time after the meeting for the purpose of informing the public of the governing body’s proceedings. The minutes, if any, are to be open for public inspection and copying.

I.C. § 5-14-1.5-4 (emphasis added). Previous public access counselors have opined that minutes in draft or unapproved form should be made available for inspection and copying upon request. *See, e.g., Op. of the Public Access Counselor 98-FC-8* at 1 (“Once created, draft or proposed minutes are public records and nondisclosure must be based upon one of the exceptions outlined in the APRA.”). Consequently, the City should have released the draft minutes upon request. If the City is concerned about releasing the minutes in draft form, the City could include a disclaimer on any copies noting that the minutes are not yet approved and subject to revision.

With regard to the City’s failure to release records it does not have, “the APRA governs access to the public records of a public agency that exist; the failure to produce public records that do not exist or are not maintained by the public agency is not a denial under the APRA.” *Op. of the Public Access Counselor 01-FC-61*; *see also Op. of the Public Access Counselor 08-FC-113* (“If the records do not exist, certainly the [agency] could not be required to produce a copy....”). Nothing in the APRA requires a public agency to create a new record or release a record in a new form in order to satisfy a request. *See Op. of the Public Access Counselor 10-FC-56* (“Where records are not yet created, a public agency does not violate the APRA by refusing to produce them.”).

Regarding your request for personnel file information, the APRA provides that personnel files of public employees and files of applicants for public employment may be excepted from the APRA’s disclosure requirements, except for:

- (A) The name, compensation, job title, business address, business telephone number, job description, education and training background, previous work experience, or dates of first and last employment of present or former officers or employees of the agency;
- (B) Information relating to the status of any formal charges against the employee; and
- (C) The factual basis for a disciplinary action in which final action has been taken and that resulted in the employee being suspended, demoted, or discharged.

I.C. § 5-14-3-4(b)(8). In other words, the information referred to in (A) - (C) above should be released to you upon request. I trust the City will release that information to you as soon as is practicable.

Finally, while the APRA prohibits a public agency from denying a public records request because the requester refuses to state the purpose of the request, nothing prohibits a public official from inquiring about the reason for the request. I.C. § 5-14-3-3(a)(2).

CONCLUSION

For the foregoing reasons, it is my opinion that draft minutes are disclosable public records that the City should have released to you upon request, the City should release all personnel file information required to be released under subsection 4(b)(8) of the APRA, and the City has not otherwise violated the APRA.

Best regards,



Andrew J. Kossack
Public Access Counselor

cc: Karen Owen