



STATE OF INDIANA

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March 1, 2010

Mr. Scott M. Friend
371 S. 900 W.
Tipton, IN 46072

Re: Formal Complaint 10-FC-27; Alleged Violation of the Access to Public Records Act by the Tipton County Fair Board

Dear Mr. Friend:

This advisory opinion is in response to your formal complaint alleging that the Tipton County Fair Board (the "Board") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.*, by denying you access to public records.

BACKGROUND

In your complaint, you allege that you requested a copy of the Board's constitution and by-laws on January 4, 2010. That day, you went to the Board's office to pick up copies of the records. At that time, the individual who maintains these records was not present, so the office secretary left a note for him. On January 19th, you returned to the office to pick up the copies but were told that you "could not have a copy."

My office forwarded a copy of your complaint to the Board. As of today, we have not received a response from the Board.

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 Board does not dispute that it is 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 Board's public records 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).

A request for access to public 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 twenty-four (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.

If a request is made orally, either in person or by telephone, a public agency may deny the request orally. IC 5-14-3-9(c). When the request is made in writing and the agency denies the request, the agency must deny the request in writing and must include a statement of the specific exemption or exemptions authorizing the withholding of all or part of the record and the name and title or position of the person responsible for the denial. I.C. § 5-14-3-9(c).

Here, it is unclear to me why the Board has denied your request. Under the APRA, a public agency that withholds a public record bears the burden of showing that the record is exempt. I.C. §§ 5-14-3-1, 5-14-3-9(f) and (g). Exceptions to disclosure are narrowly construed. I.C. § 5-14-3-1. Because the Board has not explained why it denied your request, I cannot find that the Board has sustained its burden of proof.

I encourage the Board to either produce the requested records to you or cite to an applicable exception to the APRA that provides the Board with the legal authority to withhold those records. If the Board persists in its denial of access following the issuance of an advisory opinion from this office, I leave you to your remedies before a court pursuant to Ind. Code § 5-14-3-9(e).

CONCLUSION

For the foregoing reasons, it is my opinion that the Board has not met its burden of proof under the APRA to sustain a denial of access to the records you requested.

Best regards,



Andrew J. Kossack
Public Access Counselor

Cc: Doug Crouch, Tipton County Fair Board