



STATE OF INDIANA

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March 24, 2011

Mr. Warren A. Auxier
P.O. Box 215
Hanover, IN 47243

Re: Formal Complaint 11-FC-56; Alleged Violation of the Access to Public Records Act by the Jennings County Commissioners

Dear Mr. Auxier:

This advisory opinion is in response to your formal complaint alleging the Jennings County Commissioners ("Commissioners") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.*

BACKGROUND

In your complaint, you allege that you hand-delivered a records request to the Jennings County Auditor's office ("Auditor") on February 7, 2011. Your request sought a copy of a "Signature of Refusal document" that Jennings County EMS Director Dave Gerth referenced in a communication with the Indiana Department of Homeland Security. Although your request was directed at the Commissioners, you submitted it to the Auditor in accordance with the Commissioners' instructions. On February 11th, you sent a letter via facsimile to the Jennings County Attorney stating that you had not yet received a response to your February 7th request. That office confirmed receipt of your letter. As of February 22nd, you had not received a response to your request or your letter to the Jennings County Attorney.

My office forwarded a copy of your complaint to the Commissioners, but we did not receive a response.

On March 16th, you submitted additional correspondence to this office stating that the Commissioners informed you that no record responsive to your request exists. You elected to proceed with your complaint on the grounds that the Commissioners' failure to respond violated the APRA.

ANALYSIS

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 Commissioners are 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 Commissioners’ public records during regular business hours unless the records are excepted from disclosure as confidential or otherwise 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 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. Thus, if the Commissioners failed to respond to your hand-delivered request within 24 hours of receiving it, the APRA deems your request denied. Under the APRA, when a 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). Consequently, the Commissioners’ failure to deny your request in accordance with subsection 9(c) violated the APRA.

That said, if the Commissioners do not have a record responsive to your request, the Commissioners did not violate the APRA by failing to produce a copy. *See 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....”).

CONCLUSION

For the foregoing reasons, it is my opinion that the Commissioners should have responded to your hand-delivered request within 24 hours. The Commissioners’ failure to deny your request in accordance with section 9 violated the APRA. The Commissioners have not otherwise violated the APRA.

Best regards,



Andrew J. Kossack
Public Access Counselor

cc: Shawn K. Loudon