



STATE OF INDIANA

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April 29, 2011

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

Re: Formal Complaint 11-FC-84; 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 ("City") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* My office forwarded a copy of your complaint to the City on March 30, 2011, but we have not yet received a response.

BACKGROUND

In your complaint, you allege that you hand-delivered a records request to the City on March 22, 2011. As of March 25th, you had received no response to that request. Your request sought minutes and other records related to Jonesboro City Council and Board of Works meetings, audit reports for the City, scrap metal receipts for 2007-2009, city ordinances, and the City's 2011 budget.

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 City is 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 City's 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 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. Thus, if the City 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). Because the City never responded at all, the City's failure to deny your request in accordance with subsection 9(c) violated the APRA.

Without the benefit of a response from the City, it is unclear to me why your request was denied. Under the APRA, a public agency that withholds a public record bears the burden of proof to show 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 City has not provided a justification for withholding the records at issue here, it is my opinion that the City has failed to sustain its burden.

If the City cannot justify withholding the records under the APRA, I encourage the City to release the records to you as soon as possible. To the extent the City persists in its denial of access following the issuance of an advisory opinion from this office and you believe the City to be in violation of the APRA, 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 City violated the APRA.

Best regards,



Andrew J. Kossack
Public Access Counselor

cc: Karen Owen