



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

April 8, 2011

Mr. Marcus D. Harden
Via Electronic Mail: mharden@indstate.edu

Re: Formal Complaint 11-FC-88; Alleged Violation of the Access to Public Records Act by the Gary Public Transportation Corporation

Dear Mr. Harden:

This advisory opinion is in response to your formal complaint alleging the Gary Public Transportation Corporation ("Corporation") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* The Corporation's response is enclosed for your reference. I note that I granted your request for priority status under 62 Ind. Admin. Code 1-1-3(3).

BACKGROUND

In your complaint, you allege that on March 25, 2011, the Corporation denied your records request and failed to cite to any law permitting its denial. You are seeking the records to present before the Distressed Unit Appeals Board ("DUAB").

In response to your complaint, Corporation General Manager Daryl E. Lampkins states that your request was denied "because it was unreasonable and very general." He states that because you have now provided more specificity regarding the records you seek, the Corporation will comply and forward you all responsive records. He notes that you requested emails between the Corporation's chairman to the general manager, but no such records exist.

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 Corporation does not contest that it 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

Corporation'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).

In this case, the Corporation claims that it denied your request because it was not reasonably particular. The APRA requires that a records request "identify with reasonable particularity the record being requested." I.C. § 5-14-3-3(a)(1). "Reasonable particularity" is not defined in the APRA, but the public access counselor has repeatedly opined that "when a public agency cannot ascertain what records a requester is seeking, the request likely has not been made with reasonable particularity." *Ops. of the Public Access Counselor 10-FC-57; 08-FC-176*. However, because the public policy of the APRA favors disclosure and the burden of proof for nondisclosure is placed on the public agency, if an agency needs clarification of a request, the agency should contact the requester for more information rather than simply denying the request. *See generally IC 5-14-3-1; Opinion of the Public Access Counselor 02-FC-13*. Here, it appears that the Corporation denied your request rather than seeking clarification of it.

That said, the Corporation has now agreed to provide you with all responsive records. The Corporation cannot provide emails between its chairman and general manager if no such records exist. "[T]he 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." *Opinion of the Public Access Counselor 01-FC-61*. I trust the Corporation's willingness to provide the existing records satisfies your complaint.

CONCLUSION

For the foregoing reasons, it is my opinion that the Corporation should have responded to your request by seeking clarification of the records you sought rather than issuing a blanket denial of the request. If the Corporation provides you with all existing and responsive records as soon as practicable, the Corporation has not otherwise violated the APRA.

Best regards,



Andrew J. Kossack
Public Access Counselor

cc: Daryl E. Lampkins