



STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

PUBLIC ACCESS COUNSELOR
JOSEPH B. HOAGE

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

May 2, 2012

Texal Seaton
1122 East Walnut Street
Boonville, Indiana 47601

Re: Formal Complaint 12-FC-85; Alleged Violation of the Access to Public Records Act by the Boonville City Council

Dear Mr. Seaton:

This advisory opinion is in response to your formal complaint alleging the Boonville City Council ("Council") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Our office forwarded a copy of your formal complaint to the Council. As of today's date, we have yet to receive a response.

BACKGROUND

In your formal complaint, you allege that on March 5, 2012 you submitted a request for a copy of the Council's minutes from the March 1, 2012 meeting. You were informed that you could not have the minutes, as they had yet to be approved by the Council. You believe that draft minutes are a "public record" pursuant to the APRA and that the Council must disclose the draft minutes in response to a request for records.

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." *See* I.C. § 5-14-3-1. The Council is a public agency for the purposes of the APRA. *See* I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy the Council's public records during regular business hours unless the public records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. *See* I.C. § 5-14-3-3(a).

A request for records may be oral or written. *See* 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. *See* I.C. § 5-14-3-9(a). 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. *See* I.C. § 5-14-3-9(b). 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 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. *See* I.C. § 5-14-3-9(c). 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.

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.

Memoranda are to be made available within a "reasonable period of time after the meeting for the purpose of informing the public of the governing body's proceedings." *See* I.C. § 5-14-1.5-4(c). Meeting minutes are not required under the ODL, but if created, must be available for public inspection and copying. *Id.*

Previous public access counselors have opined that minutes in draft or unapproved form should be made available for inspection and copying upon request. *See Opinion 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."); *See also Opinions of the Public Access Counselor 01-FC-65; 05-FC-23; 10-FC-264*. If the minutes are not even recorded yet, the public agency does not violate the APRA by failing to produce the minutes until they are actually created. *Opinion of the Public Access Counselor 10-FC-56* ("Draft minutes that have not yet been approved are different than records that have not yet been created. Where records are not yet created, a public agency does not violate the APRA by refusing to produce them."). If the Council is concerned about releasing the minutes in draft form, it could include a disclaimer on any copies noting that the minutes are not yet approved and subject to revision. *See Opinions of the Public Access Counselor 01-FC-65 and 10-FC-264*. Accordingly, if the Council denied your request for draft meeting minutes on the basis that the minutes had yet to be approved, it is my opinion that the Council violated the APRA.



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CONCLUSION

For the foregoing reasons, it is my opinion that the Council violated the APRA if it denied your request for draft meeting minutes on the basis that the minutes had yet to be approved by the Council.

Best regards,

A handwritten signature in black ink, appearing to read "J. Hoage".

Joseph B. Hoage
Public Access Counselor

cc: Boonville City Council