

March 26, 2008

Herman Heuss
1045 Caroline Avenue
Union City, Indiana 47390

Re: Formal Complaint 08-FC-71; Alleged Violation of the Access to Public Records Act by the Randolph County Board of Commissioners

Dear Mr. Heuss:

This advisory opinion is in response to your formal complaint alleging the Randolph County Commissioners of Commissioners ("Commissioners") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by denying you access to records. It is my opinion the Commissioners violated I.C. § 36-1-10-13(c) if the lease records were not available for public inspection in the ten days leading to the public hearing.

BACKGROUND

You allege that the Commissioners posted notice on February 20, 2008 of a public hearing about a proposed lease. The notice contained a provision indicating the related records were available for inspection and copying during the business hours of the Auditor. You allege you went to the Auditor's office on February 25 and 27 to inspect the records. You allege the records were not "on display" and had not been in the Auditor's office any time since the notice was published. Further, you allege the Auditor indicated he had a copy of the proposed lease but it was not "on display" to the public. You allege the Commissioners violated I.C. § 36-1-10-13, which requires such records to be made available for public inspection in the ten days leading to the public hearing on a proposed lease. You requested priority status but did not allege any of the reasons for priority status listed in 62 IAC 1-1-3, so priority status was not granted.

Auditor David Kelly responded to your complaint by telephone call to my office on February 29. Mr. Kelly indicated you had been granted access to the records on February 28.

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 Commissioners is clearly 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 public records of the Commissioners 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).

Ind. Code § 36-1-10-13 provides the following regarding proposed leases by political subdivisions determining to acquire structures, transportation projects, or systems by lease:

- (a) After the leasing agent and the lessor have agreed upon the terms and conditions of the lease but before the execution of the lease, the leasing agent shall publish notice, in accordance with IC 5-3-1, of a public hearing to be held before the leasing agent. The cost of the publication of the notice shall be paid by the lessor. Notice of the hearing must be given at least ten (10) days before the hearing is held . . .
- (c) The proposed lease, drawings, plans, specifications, and estimates for the structure, or description and cost estimate of the transportation project or system, are open to public inspection during the ten (10) day period and at the hearing.

Here, you allege that after seeing the notice on February 20, 2008, you went to the Auditor's office on February 25 and 27 to inspect the related records, and you were denied access. The Auditor did not indicate why you were denied access on those dates but indicated you were provided access to the records on February 28.

If the public hearing about which you complain was held pursuant to I.C. § 36-1-10-13, it is my opinion the records required to be made available by I.C. § 36-1-10-13(c) should have been made available to you upon your February 25 and 27 requests. You refer to the requirement that the records be "on display." I would note that nothing in the statute requires the records to be on display in the office or lying out on a table at all times. The records are required to be "open to inspection," which in my opinion means made available for inspection upon request. I do not have any further information regarding why the records were not made available to you on February 25 or 27, but I understand you were able to inspect the records in advance of the February 28 meeting.

CONCLUSION

For the foregoing reasons, it is my opinion the Commissioners violated I.C. § 36-1-10-13(c) if the records were not available for inspection in the ten days leading up to the hearing.

Best regards,



Heather Willis Neal
Public Access Counselor

cc: David Lenkendorf, Randolph County Board of Commissioners