



STATE OF INDIANA

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June 18, 2009

Michael Berkshire
528 Bates Street
Logansport, Indiana 46947

Re: Formal Complaint 09-FC-135; Alleged Violation of the Access to Public Records Act by the City of Logansport Parks & Recreation Department

Dear Mr. Berkshire:

This advisory opinion is in response to your formal complaint alleging the City of Logansport Parks & Recreation Department ("Department") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by denying you access to records. A copy of the Department's response to the complaint is enclosed for your reference. It is my opinion the Department has not violated the APRA, as it does not maintain records responsive to your request.

BACKGROUND

You allege that on May 5, 2009 you hand delivered to the Department a request for information. The next day you received a response from the Department, wherein the Department indicated the City of Logansport Clerk-Treasurer maintains the Department's financial records. When you asked the Clerk-Treasurer for the information, she indicated her office does not maintain the records you have requested. You further allege that on May 20 you attended the Department's Board meeting and inquired about the records. You were told the records you have requested are not maintained by the Department. You contend this is not true, as evidenced by receipts the facilities issue in the regular course of business. You filed the present complaint on June 1 (postmarked May 29). 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.

The Department responded to the complaint by letter dated June 3 from Parks Administrator Janet Fawley. The Department contends that the financial records of the Department are maintained by the Clerk-Treasurer. The Department indicates that the receipt books you referenced in your complaint are maintained there and you may obtain access to those by requesting such from the Clerk-Treasurer. Regarding your request for expense reports, the Department contends it does not and is not required to maintain such records. Finally, the Department indicates that the Department's Annual Report, which

may provide some information you are seeking, is available via the City of Logansport website.

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 Department is clearly a public agency for the purposes of the APRA. I.C. § 5-14-3-2(m). Accordingly, any person has the right to inspect and copy the public records of the Department 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).

You have requested from the Department information, separated by facility, regarding income and expenditures for each facility. The Department indicates it does not maintain records reflecting this information and is not required to maintain such records in the format you have requested. The Department has offered that you may inspect and copy receipt books in the office of the Clerk-Treasurer. Further, the Department's Annual Report is available via the City's website. If the Department does not maintain the records you have requested, though, the Department cannot provide such. Nothing in the APRA requires a public agency to *develop* records or information pursuant to a request. The APRA requires the public agency to *provide access* to records already created.

CONCLUSION

For the foregoing reasons, it is my opinion the Department has not violated the APRA, as it does not maintain records responsive to your request.

Best regards,



Heather Willis Neal
Public Access Counselor

Cc: Janet Fawley, City of Logansport Parks & Recreation Department