



STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

PUBLIC ACCESS COUNSELOR
HEATHER NEAL

Indiana Government Center South
402 West Washington Street, Room W460
Indianapolis, Indiana 46204-2745
Telephone: (317)233-9435
Fax: (317)233-3091
1-800-228-6013
www.IN.gov/pac

June 9, 2008

Jason Smathers
511 Prentiss Way
Avon, Indiana 46123

Re: Formal Complaint 08-FC-131; Alleged Violation of the Access to Public Records Act by Indianapolis Public Transportation Corp., d/b/a IndyGo

Dear Mr. Smathers:

This advisory opinion is in response to your formal complaint alleging Indianapolis Public Transportation Corp., d/b/a IndyGo ("IndyGo") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by denying you access to records. I have enclosed a copy of IndyGo's response to the complaint for your reference. It is my opinion IndyGo has not violated the APRA.

BACKGROUND

In your complaint you allege that on May 19, 2008 IndyGo denied you access to information relating to commuter profile records of an individual. You filed this complaint on May 19, alleging the agency denied the request without providing a specific statutory exemption.

IndyGo responded to the complaint by letter dated June 2 from Janice Kreuzcher of IndyGo. Ms. Kreuzcher explains that you submitted the request to Central Indiana Commuter Service ("CICS"), a vanpool project contracted to a private vendor. The CICS office is unfamiliar with the APRA and as such denied access to the records. When Indianapolis Public Transportation Corp., d/b/a IndyGo, learned of the request, IndyGo searched its records and found no records responsive to your request. IndyGo acknowledges it is a public agency for the purposes of the APRA. IndyGo has informed its vendor how to handle such requests should they be made in the future.

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. IndyGo is clearly a public agency for the purposes of the APRA, as detailed by

Ms. Kreuzscher in her response to the complaint. I.C. § 5-14-3-2. As such, any person has the right to inspect and copy the public records of IndyGo 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).

The Indiana Court of Appeals has ruled that records created for or on behalf of a public agency by an outside contractor are public records. *Knightstown Banner v. Town of Knightstown*, 838 N.E.2d 1127 (Ind. Ct. App. 2005). Under *Knightstown Banner*, the records created by the management of CICS for or on behalf of IndyGo are public records, even if they are maintained by a private entity. IndyGo has acknowledged this premise and after learning of the request has searched for the requested records. Further, IndyGo has indicated it does not find a basis in the law to withhold the records from disclosure.

While the requested records may not be excepted from disclosure, it is my opinion IndyGo did not violate the APRA. *Knightstown Banner* prohibits agencies from denying access to records on the basis they were created or are maintained by a private contractor. *Id.* But nothing in the *Knightstown Banner* decision or in the APRA requires a private contractor to respond to requests for access to records. The request must be submitted to the agency, which in turn must then retrieve the records from the contractor or ask the contractor to respond to the request. See I.C. § 5-14-3-3, regarding requests submitted to the public agency. Here, IndyGo learned of the request when this office sent a copy of the complaint to IndyGo. IndyGo then responded to the request. As such, IndyGo did not violate the APRA.

CONCLUSION

For the foregoing reasons, it is my opinion IndyGo has not violated the Access to Public Records Act.

Best regards,



Heather Willis Neal
Public Access Counselor

Cc: Janice Kreuzscher, IndyGo