



STATE OF INDIANA

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August 26, 2008

Michael Hutt
2123 East 10th
Jeffersonville, Indiana 47130

Re: Formal Complaint 08-FC-191; Alleged Violation of the Access to Public Records Act by the Jeffersonville Clerk-Treasurer's Office

Dear Mr. Hutt:

This advisory opinion is in response to your formal complaint alleging the Jeffersonville Clerk-Treasurer's Office ("Clerk") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by denying you access to records. A copy of the Clerk's response to the complaint is enclosed for your reference. It is my opinion the Clerk has not violated the APRA.

BACKGROUND

You allege that the Clerk violated the APRA by denying you access to records related to credit cards maintained by the Clerk. Specifically, you allege that you requested from the Clerk copies of credit card statements for cards issued for the Clerk's office. You allege you requested records for October through December 2007 and all record for 2008. You allege that Suzy Bass of the Clerk's office replied that the statements belong to the Clerk personally and that the office does not maintain the requested records. You filed this complaint on August 8, 2008.

You submitted additional information to this office on August 14, 2008.

The Clerk responded by letter dated August 25 from Ms. Bass. The Clerk contends the credit cards at issue were personally secured and guaranteed by the Clerk. She further alleges that the records you requested were for credit cards obtained using the Clerk's personal credit history and social security number and that the Clerk is obligated to pay the debt. Ms. Bass indicates that the Clerk provided you access to all claims submitted to and paid by the City as reimbursements for City expenses paid using the Clerk's credit cards.

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 Clerk 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 Clerk 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).

A "public record" means any writing, paper, report, study, map, photograph, book, card, tape recording or other material that is created, received, retained, maintained or filed by or with a public agency. I.C. § 5-14-3-2(n). To the extent the Clerk maintains public records responsive to your request, the Clerk is obligated to provide you access to inspect and copy those records. *See* I.C. § 5-14-3-3(a).

The central issue here is whether the credit cards for which you requested records are credit cards obtained by the public agency or by the Clerk in her individual capacity. Whether the credit cards belong to the public agency or the individual, what documentation the Clerk is required to submit to receive reimbursement for public agency expenses, and the guidelines for using personal credit cards for public expenses are issues outside the purview of this office and are issues which may be addressed by the Indiana State Board of Accounts.

It is my understanding the Clerk has provided you access to records the office maintains related to the Clerk's reimbursement for City expenses. It is my opinion this satisfies the requirements of the APRA. Further, if the Indiana State Board of Accounts requires the Clerk to maintain further documentation regarding those accounts, those records would be subject to inspection and copying unless an exception to disclosure applies. *See* I.C. § 5-14-3-3(a).

CONCLUSION

For the foregoing reasons, it is my opinion the Clerk has not violated the APRA.

Best regards,



Heather Willis Neal
Public Access Counselor

Cc: Suzy Bass, Office of the Jeffersonville Clerk-Treasurer