



# STATE OF INDIANA

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April 15, 2015

Robert M. Sklar  
116 West Main Street  
North Manchester, Indiana 46962

*Re: Formal Complaint 15-FC-96; Alleged Violation of the Access to Public Records Act by the North Manchester Parks & Recreation Department*

Dear Mr. Sklar,

This advisory opinion is in response to your formal complaint alleging the North Manchester Parks & Recreation Department (“Department”) violated the Access to Public Records Act (“APRA”), Ind. Code § 5-14-3-1 *et. seq.* The Department has responded to your complaint via Ms. Jennifer Hotchkiss, Director. Her response is enclosed for your review Pursuant to Ind. Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on March 13, 2015.

## BACKGROUND

Your complaint dated March 13, 2015 alleges the North Manchester Parks & Recreation Department violated the Access to Public Records Act by not providing records responsive to your request within a reasonable time in violation of Ind. Code § 5-14-3-3.

On December 31, 2014, you submitted to the Department a public records request seeking the following documents:

“copies of public records that outline records of meetings held by the Parks and recreation Board that established discounted fees for membership to the Pool/Fitness Center for any person, group or reason. Specifically, I want to inspect and review the minutes for the meetings in which these decisions were either discussed or decisions made or voted on.

Additionally, I would like a list of how many members are signed up under each of these discounted categories since the Pool/Fitness Center opened. (# of members, not names).”

You received a timely receipt of your request on January 6, 2015. In mid-January, you went to the front desk of the Pool/Fitness Center to review the minutes you requested, however, the front desk did not know where to look for them.

You then made a status request on January 30, 2015. On February 3, 2015 you were advised the meeting minutes were available for review during business hours, however, the rest of the information would take some time, but documents would be made available within two (2) weeks.

Apparently the minutes were made available to you on March 6, 2015. However, the list of members who received discounts has not been provided to you.

### **ANALYSIS**

The public policy of the APRA states that “a (p)roviding person 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 Ind. Code § 5-14-3-1. The North Manchester Parks & Recreation Department is a public agency for the purposes of the APRA. See Ind. Code § 5-14-3-2(n)(1). Any person has the right to inspect and copy the Department’s public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. See Ind. Code § 5-14- 3-3(a).

At the outset, it appears as if the record you seek – a list of members who received discounts from the Department – is a summary of information from other records. Essentially, you are seeking a document which may not be in existence. A public agency is not required to create a document in order to satisfy a public records request. Furthermore, a public agency is not required under the APRA to answer questions. Therefore your request for information as to how many members receive discounts may be an improperly constructed request.

On the other hand, the Director of the Department has argued the Department does not have an affirmative duty to allow you to inspect its record keeping system because it would potentially breach members’ personal information. The Department does not identify what “personal information” entails. There is no privacy exception in the APRA other than confidential financial information.

Your original request seeks a number. That number may or may not exist in documented form. I cannot conclusively find a violation on timeliness, as the record you seek may not actually be in existence. If there is a document or report stating how many members receive a discount, you are entitled to the document. If not, the Department is not obligated to create one.

## CONCLUSION

Based on the foregoing, it is the Opinion of the Public Access Counselor the North Manchester Parks & Recreation Department has not violated the Access to Public Records Act in regard to your December 31, 2014 request.

Regards,

A handwritten signature in black ink, appearing to read 'LHB', with a long horizontal flourish extending to the left.

Luke H. Britt  
Public Access Counselor

Cc: Ms. Jennifer Hotchkiss