



STATE OF INDIANA

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December 27, 2016

Mr. Brent Snow
6159 West 100 South
Tipton, Indiana 46072

Re: Formal Complaint 16-FC-292; Alleged Violation of the Access to Public Records Act by the Tipton County Redevelopment Commission

Dear Mr. Snow:

This advisory opinion is in response to your formal complaint alleging the Tipton County Redevelopment Commission (“RDC”) violated the Access to Public Records Act (“APRA”), Indiana Code § 5-14-3-1 et. seq. The RDC has responded to your complaint via Mr. Mark Regnier, Esq., Tipton County Attorney on December 5, 2016. His response is enclosed for your review. Pursuant to Indiana Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on November 16, 2016.

BACKGROUND

Your complaint dated November 16, 2016, alleges the RDC violated the APRA by not providing requested documents pursuant to your request on October 31, 2016.

On October 31, 2016, you submitted an email request to the RDC for a copy of its contract between the RDC and the law firm of Ice Miller. In addition, this document was requested through the County Auditor and Board of Commissioners and is referenced in *Opinion of the Public Access Counselor 16-FC-293*.

ANALYSIS

The public policy of the APRA states that “(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.” *See Indiana Code § 5-14-3-1*. The Tipton County Redevelopment Commission is a public agency for the purposes of the APRA. *See Indiana Code § 5-14-3-2(n)(1)*. Accordingly, any person has the right to inspect and copy the RDC’s disclosable public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. *See Indiana Code § 5-14-3-3(a)*.

As stated in *Opinion of the Public Access Counselor 16-FC-293*:

I have held on many occasions a public agency does not have to create a document in order to satisfy a public records request. Generally, if a public agency has no records responsive to a public records request, the agency does not violate the APRA by denying the request. The APRA governs access to the public records of a public agency that are already in existence; the failure to produce public records which do not exist or are not maintained by the public agency is not a denial under the APRA. If the records do not exist, certainly the Auditor could not be required to produce a copy – invoices or contracts with attorneys or firms are public record. They may be subject to some redaction, however, it is the public's right to know how much the government spends and to what vendor. The Auditor has stated the records you requested do not exist, but if and when those invoices are presented to the Auditor then you will have the right to review such documents.

As it was with the County Auditor and the County Board of Commissioners, so it is with the RDC. Once the document is located, it should be released.

Please do not hesitate to contact me with any questions.

Regards,

A handwritten signature in black ink, appearing to read 'LH Britt', with a long, sweeping underline.

Luke H. Britt
Public Access Counselor

Cc: Mr. Mark Regnier, Esq.