

January 9, 2006

Mr. Charles W. Lancaster
11501 N. CR 100 W.
Muncie, IN 47303

Re: Formal Complaint 05-FC-253; Alleged Violation of the Access to Public Records Act by the Delaware County Assessor

Dear Mr. Lancaster:

This is in response to your formal complaint alleging that the Delaware County Assessor (“Assessor”) violated the Access to Public Records Act (“APRA”) by denying you records relating to property record cards. I find that the Delaware County Assessor was obligated to provide you with a responsive record if it maintains such a record.

BACKGROUND

You claim in your formal complaint that you requested of the Assessor’s Office the name of data collectors numbered 221, 224, and 226; and the name of appraiser numbered 220. These are codes that appear on property record cards. You state that you made your request in the Assessor’s Office, and upon the clerk’s return after investigating your query, she informed you that the Assessor, Mr. James Carmichael, stated that those numbers are internal codes that are irrelevant to you. Therefore, your request was denied. You enclosed with your complaint a copy of a property record card showing the numbers under “data collector” and “appraiser.”

I sent a copy of your formal complaint to the Assessor. Assessor Carmichael responded by letter, a copy of which is enclosed for your reference. I summarize Mr. Carmichael’s response as follows:

- Mr. Carmichael disputes your version of events; the clerk did not understand the scope of your question; Mr. Carmichael did not use the term “internal code.” Further, before reading your complaint, Mr. Carmichael did not know what the information

was to be used for; therefore, there was no reasonable particularity of the record being requested.

- The codes are used to protect the identities of data collectors and appraisers, some of whom are public officials or private contractor staff. The names could be used to target persons for harassment.
- The names of the data collectors have nothing to do with the 2005 assessment appeal, the appraisal, or the setting of your property values. The request was in person and not in writing. It is unreasonable to expect that research of records from 1999 and 2001 can be performed while the requester waits.
- Records are partly developed by a private contractor, which help assessors arrive at assessed values. All appraisals are opinion-based (Mr. Carmichael cites to IC 5-14-3-4(6)). Mr. Carmichael feels he is not authorized to release the names of individuals working for a private contractor or other departments of county government.
- The request for records is for properties that exist in Center Township. The Center Township Assessor is responsible for those records. Any codes on the property record card are contractors or employees of the Center Township Assessor's Office. Mr. Carmichael does not supervise or have any authority over those employees.
- The request was made orally, and in person, and in the wrong office; therefore, the request was denied. Further, the request was fulfilled by the Center Township Office.

ANALYSIS

Any person may inspect and copy the public records of any public agency during the agency's regular business hours, except as provided in section 4 of the APRA. Ind. Code 5-14-3-3(a). A "public record" means any writing, paper, report, or other material that is created, received, retained, maintained, or filed by or with a public agency. IC 5-14-3-2(m). A request for a record may be oral or in writing. IC 5-14-3-9(a). A request for inspection or copying must identify with reasonable particularity the record being requested, and be, at the discretion of the agency, in writing on or in a form provided by the agency. IC 5-14-3-3(a). No request may be denied because the person making the request refuses to state the purpose of the request, unless such condition is required by other applicable statute. IC 5-14-3-3.

The county assessor is a "public agency" under the APRA. *See* IC 5-14-3-2(1)(2)(A). Therefore, its records are public records, and must be disclosed unless they are subject to an exemption under the APRA. If the Assessor maintains a record that shows the names corresponding to the codes that appear on the property record cards, or if there is any set of records that would show the names corresponding to the specific numbers you requested, then the record is a public record that must be disclosed by the Assessor unless an exemption applies. The Assessor does not bring forth any exemption that would apply to the record you requested,

except for oblique references to IC 5-14-3-4(6), which I take to mean IC 5-14-3-4(b)(6), the deliberative material exception.

The deliberative material exception protects “records that are intra-agency or interagency advisory or deliberative material, including material developed by a private contractor..., that are expressions of opinion or are of a speculative nature, and that are communicated for the purpose of decision making.” IC 5-14-3-4(b)(6). A record showing codes and corresponding names of appraisers and data collectors is not exempt under IC 5-14-3-4(b)(6), since the information does not constitute an expression of opinion, nor is it of a speculative nature. This is true even if an appraisal could be withheld under this exemption; records related to an exempt record are not necessarily subject to the exemption unless they, too, meet the exemption’s elements. Also, a record does not fall within an exemption because of the agency’s belief that the information is subject to misuse. *See City of Elkhart v. Agenda: Open Government, Inc.*, 683 N.E.2d. 622 (Ind.Ct.App., 1997).

The Assessor contends that you requested the record from the wrong agency. If this is true, it would not be a denial of the record, since the APRA does not require an agency to create a record or procure it from another office. However, the Assessor implies that his office maintains this record, but the Center Township Assessor is responsible for the records because the records involve properties that are located in Center Township. This argument is not persuasive, since you are entitled to any public record maintained by the Assessor, irrespective of whether some other office or agency also maintains the record.

The Assessor also contends that your request was not reasonably particular, because Mr. Carmichael was not aware of how you would use the information. A request that is stated with reasonable particularity is one that would allow the agency to determine what record you are seeking. The request does not fail to be stated with reasonable particularity merely because the agency does not understand how the information will be used. Under the APRA, you were not required to state the purpose of your request at all. IC 5-14-3-3(a).

Finally, the Assessor states that your request was made orally; therefore, the Assessor was not required to respond. If the Assessor generally requires that requests for public records be submitted on a form provided by the Assessor, the Assessor was duty-bound to inform you of the policy when you appeared in the office, and provide the form to you. You could have submitted your request on the Assessor’s form at the time that you first appeared in the Assessor’s Office, and the Assessor would have been required to respond to your request within 24 hours, pursuant to IC 5-14-3-9(a).

The Assessor violated the Access to Public Records Act when it denied you a record for the reasons it stated in its complaint response. The Assessor may not deny a request for a record because the Assessor does not understand how the information will be used, or because the request is oral, or because another office also has those same records. The denial is actionable under IC 5-14-3-9(e).

CONCLUSION

For the foregoing reasons, I find that the Delaware County Assessor violated the Access to Public Records Act.

Sincerely,

Karen Davis
Public Access Counselor

cc: James D. Carmichael