

March 31, 2005

Sent Via Facsimile

Mr. Ilie Cristea
P.O. Box 3348
Munster, IN 46321

Re: Formal Complaint 05-FC-45; Alleged Violation of the Access to Public Records Act by the Lake County Auditor

Dear Mr. Cristea:

This is in response to your formal complaint alleging that the Lake County Auditor (“Auditor”) violated the Access to Public Records Act (“APRA”) by failing to respond to your request for records.

BACKGROUND

You mailed a request to the Auditor, to the attention of the Tax Sale Department, on February 17, 2005 for records concerning the amount of tax sale surplus funds, if any, on hand for various sales, listed by specific tax sale identification number. As of the filing of your complaint on March 1, you had not received any response.

I sent a copy of your complaint to the Auditor’s Tax Sale Department. The Auditor has not offered any response to your complaint.

ANALYSIS

Any person may inspect and copy the public records of a public agency during the agency’s regular business hours, except as provided in section 4 of the APRA. The APRA requires a public agency to respond to a request for its records within prescribed timeframes. For a request that is received via U.S. Mail, by facsimile, or through electronic mail, the public agency must respond within seven (7) calendar days. Ind. Code 5-14-3-9(b). Furthermore, a

public agency that receives a *written* request for records must respond *in writing* within 7 days. IC 5-14-3-9(c).

In your complaint, you allege that the Auditor's office failed to respond within seven days of its receipt of your request. Indeed that appears to be the case, assuming that you had received no response by March 1, the date you filed your complaint, although I note that considering reasonable mailing time, the date on which a response should have been sent by the Auditor would have been February 28, the day before you filed your complaint. If you have received a response and the response was sent by February 28, the Auditor's response would have been timely. If the Auditor sent no response, or its response was sent after February 28, it was untimely under the APRA, and the Auditor is presumed to have denied you the record. A denial of the record for failure to respond timely is a violation of the Access to Public Records Act, and would be actionable under IC 5-14-3-9(e).

I also note that the records you are seeking, if they exist, appear to be disclosable public records.

CONCLUSION

For the foregoing reasons, I find that if the Auditor has not responded at all, or had not responded by February 28, 2005, your request was denied in violation of the Access to Public Records Act.

Sincerely,

Karen Davis
Public Access Counselor

cc: Gina Scheib, Tax Sale Department