

August 1, 2007

Hans Markland
58 West 1000 North
Wheatfield, Indiana 46392

Re: Formal Complaint 07-FC-194; Alleged Violation of the Access to Public Records Act by the Jasper County Surveyor

Dear Mr. Markland:

This is in response to your formal complaint alleging the Jasper County Surveyor ("Surveyor") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by denying your request for records. A copy of the Surveyor's response to your complaint is enclosed for your reference. I find that the Jasper County Surveyor did not violate the APRA.

BACKGROUND

In your complaint you allege that on June 11, 2007 you submitted a request for access to public records to the Surveyor. You specifically requested information related to the formal education of the Surveyor. You provided a copy of a letter from the Surveyor indicating there were no records responsive to your request. That letter was dated June 12, and a handwritten note at the bottom indicates it was picked up on June 29. In your complaint you indicate that after you submitted the request you heard no reply until you appeared at the Surveyor's office on June 29. We received your complaint on July 2.

The Surveyor responded to your complaint on July 11. The Surveyor indicated that you submitted your request in person at the office at approximately 1:45pm on June 11. On the same day at approximately 3:30pm, the Surveyor called your home and left a message with your wife indicating your response would be available by 12:00 noon on June 12. The Surveyor further indicates that the office does not maintain any records containing the information you have requested.

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." Ind. Code 5-14-3-1. The Surveyor is clearly a public agency for the purposes of the APRA. IC 5-14-3-2. Accordingly, any person has the right to inspect and copy the public records of the Surveyor during regular business hours unless the public records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. IC 5-14-3-3(a).

A request for records may be oral or written. IC 5-14-3-3(a); 5-14-3-9(c). If the request is made orally, a denial occurs when twenty-four hours have elapsed since the request and the public agency has refused inspection. IC 5-14-3-9(a). It has long been the opinion of the Office of the Public Access Counselor that the twenty-four hours in this provision refers to twenty-four business hours. If the request is made orally, the public agency may deny the request orally. IC 5-14-3-9(c). If the request is delivered by mail or facsimile, the agency must respond to the request within seven days of receipt. IC 5-14-3-9(b).

Here you requested records related to the education the Surveyor. Since you submitted your request by writing in person on June 11, the response by the Surveyor was required to be completed by June 14, assuming an approximately eight hour business day. While the APRA specifies that a written request must be responded to in writing, it does not require mailing the response when the request was presented in person at the office. Further, you did not provide your mailing address on the request form you submitted, so the Surveyor would not know to what address to mail the response. Under the APRA, the Surveyor was required to prepare the response in writing but did not have to mail it. He called your home on the same day you submitted the request and indicated your response would be available the following day.

The Surveyor indicated the county had no records responsive to your request because as an elected official he has never provided formal education information to the county. The APRA contains disclosure requirements for certain personnel records listed in IC 5-14-3-4(b)(8). While the APRA requires disclosure of education and training background of an employee if it is contained in a personnel file, the APRA does not require the agency to collect and/or maintain that information. Further, nothing in the APRA requires a public agency to *develop* records or information pursuant to a request. The APRA requires the public agency to *provide access* to records already created.

CONCLUSION

For the foregoing reasons, I find that the Jasper County Surveyor did not violate the Access to Public Records Act.

Best regards,

Heather Willis Neal
Public Access Counselor

cc: Kevin Arnold, Jasper County Surveyor