

August 13, 2007

Marilyn Meighen
11015 Lakeview Drive
Carmel, Indiana 46033

Re: Formal Complaint 07-FC-207; Alleged Violation of the Access to Public Records Act by the Montgomery County Union Township Assessor

Dear Ms. Meighen:

This is in response to your formal complaint alleging the Union Township Assessor (“Assessor”) violated the Access to Public Records Act (“APRA”) (Ind. Code §5-14-3) by failing to respond to your request for access to public records. The Assessor’s response to your complaint is included for your reference. I find that the Union Township Assessor violated the APRA.

BACKGROUND

You filed a complaint on July 12, 2007 alleging the Assessor violated the APRA by failing to respond to your June 25 request for records. Specifically you asked for copies of the appeals log or other records identifying appeals for the March 2002, 2004 and 2004 assessments as well as property record cards for each of those identified properties. You did not receive a response from the Assessor.

The Assessor submitted a response to your complaint on July 13. The Assessor indicated your request did not identify with reasonable particularity the records being requested as required under I.C. §5-14-3-3(a). The Assessor further indicated you could personally inspect the records and obtain copies at a fee of \$.05 per page.

ANALYSIS

Indiana Code §5-14-3-3(a) provides that any person may inspect and copy the public records of any public agency during the regular business hours of the agency, except as provided in section 4 of APRA. A “public record” means any writing, paper, report, study, map, photograph, book, card, tape recording or other material that is created, received, retained, maintained or filed by or with a public agency. I.C. §5-14-3-2.

The Assessor is clearly a public agency for the purposes of the APRA. I.C. §5-14-3-2. Accordingly, any person has the right to inspect and copy the public records of the Assessor during regular business hours unless the public records are excepted from disclosure as confidential or otherwise non-disclosable under the APRA. I.C. §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 delivered by mail or facsimile and the agency does not respond to the request within seven days of receipt, the request is deemed denied. IC §5-14-3-9(b).

Here the Assessor claims your request was not made with reasonable particularity. “Reasonable particularity” is not defined in the APRA. “When interpreting a statute the words and phrases in a statute are to be given their plain, ordinary, and usual meaning unless a contrary purpose is clearly shown by the statute itself.” *Journal Gazette v. Board of Trustees of Purdue University*, 698 N.E.2d 826, 828 (Ind. App. 1998). Statutory provisions cannot be read standing alone; instead, they must be construed in light of the entire act of which they are a part. *Deaton v. City of Greenwood*, 582 N.E.2d 882 (Ind. App. 1991). “Particularity” as used in the APRA is defined as “the quality or state of being particular as distinguished from universal.” *Merriam-Webster Online*, www.m-w.com, accessed July 18, 2007.

The facts presented here do not allow me to make a determination regarding whether the request was made with reasonable particularity. The request on its face seems particular, but without further information from the Assessor regarding why she does not consider it particular, I cannot find the request to be made without reasonable particularity.

Regardless of whether the Assessor believed the request to be made with reasonable particularity, she had a duty to respond to your request within seven days of receipt, which she did not do. I find the Assessor should have responded to your request within seven days of receipt and should have asked for clarification regarding your request if she believed it was not made with reasonable particularity.

CONCLUSION

For the foregoing reasons, I find that the Union Township Assessor violated the APRA.

Best regards,



Heather Willis Neal
Public Access Counselor

cc: Charlene Sue Sams, Union Township Assessor