

October 17, 2007

Michael Stephens
128 Pinto Way
Bloomington, Georgia 31302

Re: Formal Complaint 07-FC-281; Alleged Violation of the Access to Public Records Act by the Adams County Recorder

Dear Mr. Stephens:

This is in response to your formal complaint alleging the Adams County Recorder ("Recorder") violated the Access to Public Records Act ("APRA") (Ind. Code §5-14-3) by failing to respond to your request for access to records. A copy of the Recorder's response to your complaint is enclosed. I find that the Recorder has violated the APRA by failing to respond to your request for copies of records.

BACKGROUND

In your complaint you allege that you mailed a request for copies of several records to the Recorder on September 1, 2007. Hearing no response, you filed this complaint on September 17.

The Recorder responded by letter dated September 27. The Recorder contended that because you did not provide her with a toll-free telephone number or a self-addressed stamped envelope by which to respond to your request, she was under no obligation to do so. The Recorder provided a letter from her attorney indicating she conferred with him upon receipt of your request, and he instructed her to wait for further communication from you so she could indicate to you the costs associated with your request. He further indicated that the Recorder has prepared the requested records and is awaiting payment from you in the amount of \$9.00 before sending the records.

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." I.C. §5-14-3-1. The Recorder 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 Recorder during regular business hours unless the public records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. I.C. §5-14-3-3(a).

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.

A request for records may be oral or written. I.C. §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. I.C. §5-14-3-9(b). A response could be an acknowledgement that the request has been received and information regarding how or when the agency intends to comply. There are no prescribed timeframes when the records must be produced by a public agency.

Here the Recorder received your request for copies of records. Although the Recorder did not indicate the date of receipt of the request, we can assume it was within a few days of the date you mailed the request. The Recorder contends she was not required to respond because you did not provide her with an expense-free method for response. The APRA requires a public agency to respond to a mailed request for records within seven days of receipt of the request. I.C. §5-14-3-9(b). The APRA does not require the requester to provide a toll free telephone number or self-addressed stamped envelope for response.

While the APRA does allow the Recorder to collect a fee for copying and certification of records and to require the payment to be made in advance of producing the copies, it is my opinion the public policy of the APRA requires the public agency to respond to every request for records, even if the public agency must incur an expense to do so.

CONCLUSION

For the foregoing reasons, I find that the Recorder has violated the APRA by failing to respond to your request for copies of records.

Best regards,



Heather Willis Neal
Public Access Counselor

cc: Constance Moser, Adams County Recorder