

October 17, 2007

Michael Stephens
128 Pinto Way
Bloomington, Georgia 31302

Re: Formal Complaint 07-FC-282; Alleged Violation of the Access to Public Records Act by the Lake County Recorder

Dear Mr. Stephens:

This is in response to your formal complaint alleging the Lake 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 18, indicating the Recorder does not maintain any records responsive to your request. The Recorder further indicates the Lake County Circuit Court Clerk might be the appropriate agency to contact for those 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).

Here the Recorder did not indicate whether she received your request for copies of records. If the Recorder did receive the request, the APRA requires the Recorder to have responded to your mailed request for records within seven days of receipt of the request. I.C. §5-14-3-9(b). The agency is required to respond even when it is not the agency who maintains the records. An appropriate response from the Recorder would have been an indication that the Recorder’s office does not maintain any records responsive to your request. The Recorder could also direct you to the appropriate public agency to whom to send your request.

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: Carolyn Pollard, Lake County Recorder