

October 31, 2007

Michael Stephens  
128 Pinto Way  
Bloomington, Georgia 31302

*Re: Formal Complaint 07-FC-309; Alleged Violation of the Access to Public Records Act by the Harrison County Recorder*

Dear Mr. Stephens:

This is in response to your formal complaint alleging the Harrison 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. It is my opinion that while the Recorder's response was untimely under the APRA, the Recorder has not otherwise violated the APRA.

#### BACKGROUND

In your complaint you allege that you mailed a request for copies of several records to the Recorder on September 15, 2007. Hearing no response, you filed this complaint on October 4.

The Recorder responded by letter dated October 9. The Recorder indicated that her failure to respond was not intentional. She indicates the delay in responding was caused by her need to cover vacation schedules as well as trying to determine where to locate 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).

Here the Recorder received the request but did not respond until October 9, after receiving a copy of this complaint. Even though the Recorder was short on human resources because of staff vacations, the APRA still requires an agency to respond to a request within seven days of receipt. 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. A public agency is required to regulate any material interference with the regular discharge of the functions or duties of the public agency or public employees. I.C. §5-14-3-7(a). However, section 7 does not operate to deny to any person the rights secured by section 3 of the Access to Public Records Act. I.C. §5-14-3-7(c). The public access counselor has stated that records must be produced within a reasonable period of time, based on the facts and circumstances.

It is my understanding the recorder has now provided you with the records you requested. It is my opinion that while the response was untimely, the Recorder provided the records to you within a reasonable period of time.

#### CONCLUSION

For the foregoing reasons, it is my opinion that while the Recorder’s response was untimely under the APRA, the Recorder has not otherwise violated the APRA.

Best regards,



Heather Willis Neal  
Public Access Counselor

cc: Barbara Mathes, Harrison County Recorder