

November 19, 2007

Michael Stephens
128 Pinto Way
Bloomington, Georgia 31302

Re: Formal Complaint 07-FC-322; Alleged Violation of the Access to Public Records Act by the Hendricks County Recorder

Dear Mr. Stephens:

This is in response to your formal complaint alleging the Hendricks 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 19, 2007. Hearing no response, you filed this complaint on October 18.

The Recorder responded to your complaint by letter dated October 30. The Recorder indicated that after a brief search he had determined that most of the records you requested were available from the Indiana Secretary of State's office or the Hendricks County Clerk's office.

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 30, after receiving a copy of this complaint. The Recorder was required to respond to your 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 information as to how to obtain the records you requested. It is my opinion that while the response was untimely, the Recorder has not further violated the APRA since he has provided you with the requested information.

I will note here that you have filed several complaints with this office. The pattern seems to be that you request records and then wait until seven days after the agency should have received the request. At that point you file a complaint with this office. Since obtaining the records is your goal and in light of the thirty days you must wait for my opinion, I would strongly encourage you to contact the agency after seven days have passed to inquire about the status of the request. While you are under no obligation to do this under the APRA, it might be a much more efficient and effective way to get the records you seek than filing complaint after complaint with this office.

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: Paul Hardin, Hendricks County Recorder