

November 27, 2007

Michael Stephens
128 Pinto Way
Bloomington, Georgia 31302

Re: Formal Complaint 07-FC-329; Alleged Violation of the Access to Public Records Act by the LaPorte County Recorder

Dear Mr. Stephens:

This is in response to your formal complaint alleging the LaPorte 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 the Recorder has violated the APRA by not responding to your request.

BACKGROUND

In your complaint you allege that you mailed a request for copies of several records to the Recorder on October 6, 2007. Hearing no response, you filed this complaint on October 29.

The Recorder responded to your complaint by electronic mail dated November 19. The Recorder indicated that the records requested were not recorded in her office. She further indicated she assumed you would discover the information elsewhere during your research.

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 because her office does not maintain the requested records. An agency is required to respond to any request it receives, even if the records are not maintained by that particular agency. An appropriate response would be an indication that the agency has received the request and does not maintain any records responsive to the request.

Regarding the Recorder’s assertion that the office does not maintain any responsive records, this is not a violation of the APRA. An agency is not required to produce records it is not responsible for maintaining.

CONCLUSION

For the foregoing reasons, it is my opinion that the Recorder has violated the APRA by not responding to your request.

Best regards,



Heather Willis Neal
Public Access Counselor

cc: Barbara Dean, LaPorte County Recorder