



STATE OF INDIANA

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December 7, 2010

Mr. James H. O'Donnell
53168 Juday Creek
Granger, IN 46530

Re: Formal Complaint 10-FC-302; Alleged Violation of the Access to Public Records Act by the St. Joseph County Assessor and St. Joseph County Property Tax Assessment Board of Appeals

Dear Mr. O'Donnell:

This advisory opinion is in response to your formal complaint alleging the St. Joseph County Assessor ("Assessor") and St. Joseph County Property Tax Assessment Board of Appeals ("Board") (collectively, the "Respondents") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* I note that I granted your request for priority status under 62 Ind. Admin. Code 1-1-3(3).

BACKGROUND

In your complaint, you allege that you filed a records request with the Assessor on June 24, 2010. You did not receive a response. On November 23rd, you delivered a similar request to both the Assessor and the Board. As of November 30th, the date you filed your complaint, you had not received a response from either agency.

My office forwarded a copy of your complaint to the Respondents. As of today, we have not yet received a response from either the Assessor or the Board.

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 Respondents are public agencies for purposes of the APRA. I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy their public records during regular business hours unless the records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. I.C. § 5-14-3-3(a).

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 (7) days of receipt, the request is deemed denied. I.C. §5-14-3-9(b). If the request is delivered in person and the agency does not respond within 24 hours, the request is deemed denied. I.C. §5-14-3-9(a). A response from the public agency could be an acknowledgement that the request has been received and information regarding how or when the agency intends to comply. Because these timeframes have elapsed since you delivered your request on November 23rd, your requests are deemed denied as a matter of law.

Here, it is unclear to me why the Respondents denied your request. Without the benefit of a response from the agencies, I do not have sufficient information to determine whether or not the substance of their denials violated the APRA. Under the APRA, a public agency that withholds a public record bears the burden of showing that the record is exempt. I.C. §§ 5-14-3-1, 5-14-3-9(f) and (g). Exceptions to disclosure are narrowly construed. I.C. § 5-14-3-1. Because the Respondents have not provided a justification for withholding the records at issue here, it is my opinion that they have failed to carry that burden.

If the Respondents cannot justify withholding the records under the APRA, I encourage them to release the records to you as soon as possible. To the extent the Respondents persists in denying access following the issuance of an advisory opinion from this office and you believe they are in violation of the APRA, I leave you to your remedies before a court pursuant to Ind. Code § 5-14-3-9(e).

CONCLUSION

For the foregoing reasons, it is my opinion that the Respondents have not sustained their burden of proof to demonstrate that they had a legal basis to withhold the records you requested.

Best regards,



Andrew J. Kossack
Public Access Counselor

cc: David Wesolowski