



STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

PUBLIC ACCESS COUNSELOR
ANDREW J. KOSSACK

Indiana Government Center South
402 West Washington Street, Room W470
Indianapolis, Indiana 46204-2745
Telephone: (317)233-9435
Fax: (317)233-3091
1-800-228-6013
www.IN.gov/pac

March 23, 2010

Mr. and Mrs. Dan and Karen Hoagland
Hoagland Family Limited Partnership
1114 Lake Dr.
Fremont, IN 46737

Re: Formal Complaint 10-FC-44; Alleged Violation of the Access to Public Records Act by the Allen County Surveyor and the Storm Water Quality Program Manager

Dear Mr. and Mrs. Hoagland:

This advisory opinion is in response to your formal complaint alleging the Allen County Surveyor and the Storm Water Quality Program Manager (collectively the "Officials") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.*, by failing to respond to your access to public records. I have enclosed the Officials' response to your complaint for your review.

BACKGROUND

According to your complaint, you allege that on February 9, 2010, you sent a letter to the Officials requesting access to public records. You allege that the Officials received the letters on February 10th, but as of February 20th you had not received a response.

In response to your complaint, the Officials do not contest the fact that they did not respond to your request. However, the Officials maintain they do not have any records responsive to your request.

ANALYSIS

The public policy of the APRA states, "[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 Officials do not contest that they meet the definition of a "public agency" under the APRA. IC 5-14-3-2. Accordingly, any person has the right to inspect and copy their public records during regular business hours unless the public records are excepted from disclosure as 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. Here, it appears the Officials failed to respond to your written request within the required seven (7) days in violation of the APRA.

The Officials maintain, however, that they have no records responsive to your request. If a public agency has no records responsive to a public records request, the agency does not violate the APRA by denying the request. “[T]he APRA governs access to the public records of a public agency that exist; the failure to produce public records that do not exist or are not maintained by the public agency is not a denial under the APRA.” *Opinion of the Public Access Counselor 01-FC-61*; see also *Opinion of the Public Access Counselor 08-FC-113* (“If the records do not exist, certainly the [agency] could not be required to produce a copy....”).

I note that public records requests are directed to public *agencies* rather than public *employees*. See I.C. § 5-14-3-3(a). The mere fact that a person works for a public agency or holds a public office does not create a right in the public to access that individual’s personal records. 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. This definition does not include the *personal* records of public officials that are not created, received, retained, maintained, or filed by or with a public agency. *Id.*

CONCLUSION

For the foregoing reasons, it is my opinion that the Officials violated the APRA by failing to respond to your request within the required seven (7) days. Because the Officials have no records responsive to your request, however, the Officials did not otherwise violate the APRA.

Best regards,



Andrew J. Kossack
Public Access Counselor

Cc: Matt Jarrett
Allan Frisinger