



STATE OF INDIANA

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May 2, 2013

Mr. Rick Volbrecht
9221 Parkway Drive
Highland, Indiana 46322

Re: Formal Complaint 13-FC-131; Alleged Violation of the Access to Public Records Act by the Lake County Treasurer

Dear Mr. Volbrecht:

This advisory opinion is in response to your formal complaint alleging the Lake County Treasurer ("Treasurer") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* John Petalas, Treasurer, responded in writing to your formal complaint. His response is enclosed for your reference. I have granted your formal complaint priority status pursuant to 62 Ind. Admin. Code 1-1-3(3).

BACKGROUND

On April 12, 2013, you submitted a written request for records to the Treasurer. Your request sought records concerning the property tax levy collection rate for Lake County as a whole and for each township, city, town, and incorporated area within Lake County from 2008 through 2012. You requested that the information be provided via Microsoft Excel Spreadsheet.

On April 15, 2013, the Treasurer acknowledged in writing that it had received your request. The Treasurer informed you that tax rates are collected and advertised by the Lake County Auditor, not the Treasurer; the Treasurer solely collects the taxes. The Treasurer provided you with the contact information for the Lake County Auditor. You submitted a reply to the Treasurer's response on the date of its receipt and clarified that you were not seeking the tax rates; rather you sought the collection rate. The Treasurer confirmed the receipt of your response on the same date and apologized for the confusion. You were informed that the request would be forwarded to the County's IT Department. As of April 26, 2013, you have yet to receive any records in response to your request from the Treasurer. You provide that the information requested of the Treasurer will be submitted to the Lake County Council at its meeting on April 26, 2013 regarding the 1.5% County Income Tax. The meeting was originally scheduled for May 14, 2013. You provide that in lieu of providing you with actual copies of the spreadsheet,

the Treasurer should offer you the opportunity to inspect the records that have already been printed.

In response to your formal complaint, Mr. Petalas advised that the agency received your request, via email, on April 15, 2013. Upon receipt of the request, the Treasurer immediately began the process of obtaining whatever information that was available. Mr. Petalas forwarded the request to the county data processing department and Mr. Mike Weiser, budget director for the Lake County Auditor.

On April 17, 2013, Mr. Petalas provided to you via email all information that was maintained by the Treasurer. You were provided with voluminous records that provided information on the tax collection rates and collection percentages; the information that was provided is the same that was provided to Mr. Petalas during the period of tax collection. There is no other information available other than the format that was submitted to you. The Treasurer is not required by either the State Board of Accounts or the Indiana Department of Local Government Finance to keep any further data. The information provided to you has previously been sent to the local media.

Mr. Weiser from the Lake County Auditor's office has advised that the detailed information you are seeking would take weeks to compile. Mr. Petalas reiterates that the Treasurer is not required to compile the information as requested. Mr. Weiser had indicated that if you would like to meet with him to discuss the issue, you could come and see him at anytime. The meeting you have addressed in your formal complaint to be held by the County Council has been rescheduled.

You filed further written correspondence after the submission of your original formal complaint. You anticipated that the Treasurer's response to your formal complaint would be that the county's IT Department was overwhelmed at the moment with the processing of individual, business, and rental owner property taxes. You reiterate that the information you seek has already been printed; all that is required of the Treasurer is to provide you with an opportunity to inspect said copies. In a separate correspondence, you noted that the meeting of the County Council has now been rescheduled for May 6, 2013.

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." *See* I.C. § 5-14-3-1. The Treasurer is a public agency for the purposes of the APRA. *See* I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy the Treasurer's public records during regular business hours unless the records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. *See* I.C. § 5-14-3-3(a).

A request for records may be oral or written. *See* I.C. § 5-14-3-3(a); § 5-14-3-9(c). If the request is delivered in person and the agency does not respond within 24 hours, the request is deemed denied. *See* I.C. § 5-14-3-9(a). 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. *See* I.C. § 5-14-3-9(b). A response from the public agency could be an acknowledgement that the request has been received and include information regarding how or when the agency intends to comply. Here the Treasurer acknowledged the receipt of your written request in writing within seven days of its receipt. As such, it is my opinion that the Treasurer complied with section 9(b) of the APRA in response to your request.

As to the substance of your request, I would initially note that the Lake County Auditor is separate and distinct public agency from the Lake County Treasurer. Your original request and formal complaint 13-FC-131 were filed with and against the Treasurer. The Treasurer is not required under the APRA to provide you with records maintained by the Auditor. Here, the Treasurer has stated that you have been provided with all records maintained by the Treasurer. Mr. Petalas has advised that he has spoken with Mr. Weiser from the Auditor's office, who has stated that he is willing to meet with you regarding your request at any time. You have stated that the information that you are seeking has already been printed by the Treasurer, has yet to be provided, and all that you are requesting is an opportunity to come to the Treasurer's office to inspect the records.

The Public Access Counselor is not a finder of fact. Advisory opinions are issued based upon the facts presented. If the facts are in dispute, the public access counselor opines based on both potential outcomes. *See Opinion of the Public Access Counselor 11-FC-80*. "[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...."). Moreover, the APRA does not require a public agency to create a new record in order to satisfy a public records request. *See Opinion of the Public Access Counselor 10-FC-56*. If the Treasurer has provided all records that are responsive to your request, it is my opinion that the Treasurer has not violated the APRA. Pursuant to your allegations, if there still remains records that have not been disclosed, the parties need to agree on a date in the immediate future to allow you an opportunity to inspect said records. From all that has been provided, it would appear that the issues that have been raised could be resolved if the parties, along with Mr. Weiser, agreed to meet to discuss the request and what records are available from both the Treasurer and/or the Auditor.

CONCLUSION

For the foregoing reasons, it is my opinion that that the Treasurer complied with the requirements of section 9(b) of the APRA in response to your request. Further, it is my opinion that *if* the Treasurer has provided all records responsive to your April 12, 2013 request, it has complied with the APRA (emphasis added).

Best regards,

A handwritten signature in black ink, appearing to read "J. Hoage". The signature is written in a cursive style with a large initial "J" and a distinct "H".

Joseph B. Hoage
Public Access Counselor

cc: John Petalas