



# STATE OF INDIANA

**MICHAEL R. PENCE, Governor**

**PUBLIC ACCESS COUNSELOR  
JOSEPH B. HOAGE**

Indiana Government Center South  
402 West Washington Street, Room W470  
Indianapolis, Indiana 46204-2745  
Telephone: (317) 234-0906  
Fax: (317) 233-3091  
1-800-228-6013  
[www.IN.gov/pac](http://www.IN.gov/pac)

February 20, 2013

Mr. Frank R. Martinez  
9180 Doubletree Drive South  
Winfield, IN 46307

*Re: Formal Complaint 13-FC-15; Alleged Violation of the Access to Public Records Act by the Lake County Assessor's Office*

Dear Mr. Martinez:

This advisory opinion is in response to your formal complaint alleging the Lake County Assessor's Office ("Assessor") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Our office forwarded a copy of your formal complaint to the Assessor on January 22, 2013. As of today's date, we have yet to receive a response.

## BACKGROUND

In your formal complaint, you provide that on June 22, 2012, you submitted a written request for records to the Assessor for "copies of any and all documents of electronically stored media used by the assessor's office in determining the assessed value of parcel #45-17-04-251-015.000-047, commonly known as 9180 Doubletree Drive South, Winfield, IN 46307." You provide that the only response you received from the Assessor was an emailed inquiry, sent on August 9, 2012, as to what year you were requesting the information for. You responded to the Assessor's inquiry on the date of its receipt.

On January 16, 2013, you inquired again with the Assessor regarding the status of your request. Ms. Stone provided that the information you seek could be found at [www.in.gov/dlgf](http://www.in.gov/dlgf) in the Regulation 17 manual. You expressed to the Assessor that you did not believe the information in Regulation 17 was responsive to your request. Ms. Stone advised that the information is collected regarding your home and is reflected on your property record card, all of which is done according to Regulation 17. The information is then entered into the computer where the pricing ladders are downloaded per Regulation 17, which the State annually provides to the Assessor. Some of the information utilized is subjective based on the individual that actually does the site inspection. On a new property, the information is entered and a neighborhood factor is applied depending on the desirability and then the State mandated located factor. The

Assessor provided that it might have a field sheet for your property, but that information is already reflected on the property record card.

## 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 Assessor 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 Assessor’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 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 information regarding how or when the agency intends to comply. Here, you provide that you submitted your written request on June 22, 2012, to which you allege that the Assessor’s initial response did not occur until August 9, 2012 when inquired as to the time period of your request. As such, it is my opinion that the Assessor acted contrary to the requirements of section 9(b) of the APRA by failing to acknowledge the receipt of your written request in writing within seven (7) days.

Effective July 1, 2012, the APRA provides a public agency shall provide records that are responsive to the request within a reasonable time. *See* I.C. § 5-14-3-3(b). The public access counselor has stated that factors to be considered in determining if the requirements of section 3(a) under the APRA have been met include, the nature of the requests (whether they are broad or narrow), how old the records are, and whether the records must be reviewed and edited to delete nondisclosable material is necessary to determine whether the agency has produced records within a reasonable timeframe. The APRA requires an agency to separate and/or redact confidential information in public records before making the disclosable information available for inspection and copying. *See* I.C. § 5-14-3-6(a). Section 7 of the APRA requires a public agency to regulate any material interference with the regular discharge of the functions or duties of the public agency or public employees. *See* 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. *See* I.C. § 5-14-3-7(c). The ultimate burden lies with the public agency to show the time period for producing documents is reasonable. *See Opinion of the Public Access Counselor 02-FC-45*. This office has often suggested a public agency make portions of a response available from time to time when a large number of documents are being reviewed for disclosure. *See Opinions of the Public Access Counselor 06-FC-184; 08-FC-56; 11-FC-172*. Further nothing in the APRA indicates that a public agency’s failure to provide “instant access” to the requested records constitutes a denial of access. *See Opinions of the Public Access Counselor 09-FC-192 and 10-FC-121*.

Generally, 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....”). 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*.

Without the benefit of a response from the Assessor to your formal complaint, it is difficult to determine whether it complied with the requirements of section 3(b) of the APRA in response to your request. Under the APRA, a public agency that withholds a public record bears the burden of proof to show that the record is exempt. See I.C. §§ 5-14-3-1, 5-14-3-9(f), (g). Exceptions to disclosure are narrowly construed. See I.C. § 5-14-3-1. As your original request was submitted on June 12, 2012, it is my opinion that the Assessor acted contrary to section 3(b) of the APRA by failing to provide records responsive to your request in a reasonable period of time, minus any applicable exceptions to disclosure. However, I would note that the Assessor would not violate the APRA if it has provided all records that it maintains that are responsive to your request, which I infer from the Assessors’ January 2013 email correspondence is the position of the agency. If the Assessor has provided all records that are responsive, the agency would not violate the APRA by not maintaining or creating a record that was responsive to your request that it was not otherwise legally obligated to retain.

#### CONCLUSION

Based on the foregoing reasons, it is my opinion that the Assessor acted contrary to section 9(b) of the APRA by failing to acknowledge in writing the receipt of your written request within seven (7) days of its receipt. Further, it is my opinion that the Assessor acted contrary to the requirements of section 3(b) of the APRA by failing to provide records responsive to your request, minus any applicable exception to disclosure, in a reasonable period of time.

Best regards,

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

Joseph B. Hoage  
Public Access Counselor

cc: Lake County Assessor