



STATE OF INDIANA

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July 1, 2013

Abbie G. Taylor
1309 Park Road
Anderson, Indiana 46011

Re: Formal Complaint 13-FC-180; Alleged Violation of the Access to Public Records Act by the Clerk-Treasurer of the City of Edgewood

Dear Ms. Taylor:

This advisory opinion is in response to your formal complaint alleging the Clerk-Treasurer of the City of Edgewood ("Clerk") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Katherine Tanner, Clerk-Treasurer, responded in writing to your formal complaint. Her response is enclosed for your reference.

BACKGROUND

In your formal complaint, you provide that you contacted the Town of Edgewood regarding liens that had been placed on certain real property. You were informed at the time that the Clerk would be the person to assist you with your inquiry, but that she was out of the office until Monday, June 24, 2013. You thereafter contacted the Clerk on June 24, 2013 via telephone and sought information regarding the liens. Ms. Tanner informed you at that time she was extremely busy, as this was her first day back in the office after being on vacation. She was able to provide general information regarding one of the liens, but was unable to answer your question at the time regarding certain service dates. At the time of the filing of your formal complaint, you still are in need of the requested information.

In response to your formal complaint, Ms. Tanner advised that you contacted her office on Monday, June 24, 2013. On said date, Ms. Tanner was able to provide you with general information regarding one of the liens and that she would try to get you the remaining information by the end of the week. On June 27, 2013, Ms. Tanner provided via email all remaining information that was sought. She also verified the previously provided information that was disclosed to you on Monday, June 24, 2013. At that time, Ms. Tanner also requested that all further requests for information be made in writing in order to ensure a proper response is issued.

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 Clerk 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 Clerk’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 orally and the agency does not respond within 24 hours, the request is deemed denied. *See* I.C. § 5-14-3-9(a). 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. There is no dispute that on Monday, June 24, 2013, you made an oral request of the Clerk for certain information and/or records. The Clerk acknowledged the receipt of your request on the date of its receipt. As such, it is my opinion that the Clerk complied with the requirements of section 9(a) of the APRA in response to your request.¹

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 among the factors to be considered in determining if the requirements of section 3(b) 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 redacted prior to disclosure. 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*.

As applicable here, the Clerk was able to provide all information and/or records in response to your request on June 27, 2013, three days after the original request was

¹ At the agency’s discretion, a request to inspect and copy may be in writing or on a form provided by the agency. *See* I.C. § 5-14-3-3(a)(2). Thus for any future requests submitted to the Clerk, it can require that said requests be made in writing.

submitted. In light of the fact that the Clerk had just returned to the office after a two-week vacation and all information was provided to you within three business days, it is my opinion that the Clerk complied with the requirements of section 3(b) of the APRA in response to your request.

CONCLUSION

For the foregoing reasons, it is my opinion that the Clerk did not violate the APRA in response to your request.

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 "Hoage" following.

Joseph B. Hoage
Public Access Counselor

cc: Katherine Tanner