



STATE OF INDIANA
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August 5, 2013

Ms. Diane E. Haas
P.O. Box 432
Harbert, Michigan 49115

Re: Formal Complaint 13-FC-225; Alleged Violation of the Access to Public Records Act by the LaPorte County Assessor

Dear Ms. Haas:

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

BACKGROUND

In your formal complaint you provide that you currently have an appeal hearing before the LaPorte County PTABOA Board ("Board") set for August 8, 2013. You allege that you have been informed by the Assessor that all supporting documentation for your appeal must be submitted no later than August 2, 2013. You further allege that you were informed by the Assessor that you would not be provided with certain appraisals for the properties that were subject of your appeal. You verified with the Indiana Board of Tax Review that you were entitled to receive copies of the appraisals that had been performed.

In response to your formal complaint, Mr. Schultz advised that he contacted you via telephone on June 25, 2013 to discuss your appeal. You indicated at that time that you did not want to discuss the properties in question as the necessary paperwork was not readily available. Thereafter, you appeared at the Assessor's offices and requested property record cards and CMA reports on your properties. At that time, three of the four CMA reports had been completed and you were provided with said copies, along with property records cards for all four properties. You were informed as soon as the fourth CMA report was completed a copy would be provided. On July 17, 2013 you again appeared at the Assessor's office and requested property card information for an additional 52 properties. At that time you were given a copy of the fourth CMA report.

You were informed that printing of the property cards would take some time and that the agency would contact you when the process was complete. On July 24, 2013, you were provided copies of all 52 property records cards that had been requested. The Assessor has provided all records responsive to your request. At the current time, the appraisals that you have requested have yet to be completed; thus it is impossible to provide you with a record that does not currently exist. In order to accommodate your concerns, your appeal hearing before the Board has been postponed and rescheduled for August 22, 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 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 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. An agency is required to provide all records responsive to a request made pursuant to the APRA in a reasonable period of time. *See* I.C. § 5-14-3-3(b).

“[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. Here, you have requested copies of the appraisal maintained by the Assessor performed on four properties. Mr. Schultz has provided while the agency has ordered an appraisal to be performed on all four properties, the appraisals have yet to be completed. Thus, the Assessor is unable to provide you with a record that does not exist. I further infer from the Assessor’s response to your formal complaint that copies of said appraisals will be provided once received by the Assessor. In order to accommodate your concerns regarding providing the requisite supporting documentation to the Assessor prior to the hearing, your appeal hearing has been rescheduled to August 22, 2013. As such, it is my opinion that the Assessor has not violated the APRA by failing to produce a record that did not exist at the time of your request. As the appraisals will be made

available upon receipt by the Assessor and your hearing before the Board has been rescheduled in order to address your concerns, I trust this to be in satisfaction of your formal complaint.

CONCLUSION

For the foregoing reasons, it is my opinion that the Assessor did not violate the APRA by failing to provide a record that did not exist at the time of 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 "H".

Joseph B. Hoage
Public Access Counselor

cc: Mike Schultz