



STATE OF INDIANA

MICHAEL R. PENCE, Governor

PUBLIC ACCESS COUNSELOR
LUKE H. BRITT

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

May 1, 2014

Tom J. Terry
3804 W. Allen Ct.
Muncie, IN 47304

Re: Formal Complaint 14-FC-72; Alleged Violation of the Access to Public Records Act by the Delaware County Assessor

Dear Mr. Terry,

This advisory opinion is in response to your formal complaint alleging the Delaware County Assessor ("Assessor") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et. seq.* The Assessor has provided a response to your complaint via Mr. Steven D. Murphy, Esq. His response is attached for your review. Pursuant to Ind. Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on April 1, 2014.

BACKGROUND

Your complaint dated April 1, 2014 alleges the Delaware County Assessor violated the Access to Public Records Act by not providing records responsive to your request in violation of Ind. Code § 5-14-3-3(a).

On March 7, 2014 you served upon the Assessor a public records request seeking information related to service contracts entered into by the County. The Assessor responded with a timely acknowledgement on March 10, 2014 advising you that a search had been undertaken to retrieve the records and a status update would be provided to you on March 14, 2014. After no status update was given, you made a second request on March 21, 2014. Again the Assessor responded stating the record search was still in progress and an update would be provided to you on March 28, 2014. An update was written on March 28, 2014, but not mailed until March 31, 2014.

You filed your complaint on April 1, 2014; however, on April 2, 2014, the records were provided to you.¹ The production of the documents took approximately 25 calendar days or 18 business days. Your contention appears to be the lack of updates provided to you prior to production.

DISCUSSION

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 Ind. Code § 5-14-3-1. The Delaware County Assessor is a public agency for the purposes of the APRA. See Ind. Code § 5-14-3-2(n)(1). Accordingly, any person has the right to inspect and copy the Assessor’s public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. See Ind. Code § 5-14-3-3(a).

If an agency determines a search may take a lengthy amount of time to produce, I routinely encourage public officials to update the requestors periodically as to the status of the search. While I consider this best practice, the APRA does not require it. It appears the Assessor intended to provide periodic updates and failed to do so. Nonetheless, it is not violative of the law, nor do I consider 18 business days to be an extraordinarily long time frame for producing records of this nature. The APRA requires a public agency to produce documents “within a reasonable amount of time”. See Ind. Code § 5-14-3-3(b). The searching and retrieval time (as well as attorney review) appears to be reasonable in these circumstances. It is unfortunate the Assessor did not follow through on his promise of updating you on the status of the search, but he is not in violation of the law for that oversight.

CONCLUSION

Based on the foregoing, it is the Opinion of the Public Access Counselor the Delaware County Assessor did not violate the Access to Public Records Act. As indicated in the footnote, should you feel it necessary to file a subsequent complaint as to the actual production of documents; the Assessor will be afforded an opportunity to respond to those allegations.

Regards,

¹ In a supplemental filing received by the PAC Office on April 16, 2014, you contend the records did not wholly satisfy the request. Your April 1, 2014 formal complaint takes exception to the timeliness of the production of the records and the Assessor has not been given the opportunity to respond to your dissatisfaction of the records which were provided. Please be advised, if you would like to challenge the quality of the actual production of records, this would need to be done in a separate complaint. I will begin the tolling of the timeframe for your complaint on May 1, 2014. You will have thirty days to file a separate complaint.

A handwritten signature in black ink, appearing to be 'LHB', written in a cursive style.

Luke H. Britt
Public Access Counselor

Cc: Mr. Steven D. Murphy, Esq.