



# STATE OF INDIANA

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June 17, 2008

Houston Gaines  
1981 SR 135  
Franklin, Indiana 46131

*Re: Formal Complaint 08-FC-135; Alleged Violation of the Access to Public Records Act by the Perry Township (Marion County) Assessor's Office*

Dear Mr. Gaines:

This advisory opinion is in response to your formal complaint alleging the Perry Township Assessor's Office ("Assessor") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by denying you access to property records. I have enclosed a copy of the Assessor's response to the complaint for your reference. It is my opinion the Assessor has not violated the APRA.

## BACKGROUND

You allege that on May 15, 2008 you appeared at the Assessor's Office and made a request to inspect property records. You allege the Assessor denied you access to the records, indicating the information was not available. You mailed this complaint on May 20, and my office received it on May 21.

The Assessor responded to the complaint by letter dated June 5. The Assessor contends that on May 15 she was at a meeting away from the office and not available. She indicates her chief deputy was assisting another person and not available when you were in the office. The Assessor contends you were asked to make an appointment to review the information but refused. The Assessor further contends that current sales disclosure data is confidential because it contains data like social security numbers and telephone numbers that must be removed before the public can see the information. The Assessor also contends that the office was not certain what records you were requesting.

## ANALYSIS

The public policy of the APRA states, "(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." I.C. § 5-

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

A request for records may be oral or written. I.C. §§ 5-14-3-3(a), 5-14-3-9(c). If the request is made in person and the agency does not respond to the request within twenty-four hours of receipt, the request is deemed denied. I.C. § 5-14-3-9(a).

A response could be an acknowledgement that the request has been received and information regarding how or when the agency intends to comply. There are no prescribed timeframes when the records must be produced by a public agency. A public agency is required to regulate any material interference with the regular discharge of the functions or duties of the public agency or public employees. 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. I.C. § 5-14-3-7(c). The public access counselor has stated that records must be produced within a reasonable period of time, based on the facts and circumstances. Consideration of 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 are necessary to determine whether the agency has produced records within a reasonable timeframe.

Here, you appeared at the office on May 15 and expected to inspect the records immediately. Nothing in the APRA requires a public agency to grant you immediate access to inspect or copy records. Instead, the agency must respond to the request within twenty-four hours. I.C. § 5-14-3-9(a). I often advise agencies to make a mutually convenient appointment with a requester, especially when the agency is in the midst of a busy time or is an agency with frequent walk-in traffic. Here, the Assessor contends her staff attempted to make an appointment with you, but you refused. It is my opinion the Assessor has not violated the APRA by failing to provide immediate access to records.

Further, a request must identify with reasonable particularity the record being requested. I.C. § 5-14-3-3(a). “Reasonable particularity” is not defined in the APRA. “When interpreting a statute the words and phrases in a statute are to be given their plain, ordinary, and usual meaning unless a contrary purpose is clearly shown by the statute itself.” *Journal Gazette v. Board of Trustees of Purdue University*, 698 N.E.2d 826, 828 (Ind. Ct. App. 1998). Statutory provisions cannot be read standing alone; instead, they must be construed in light of the entire act of which they are a part. *Deaton v. City of Greenwood*, 582 N.E.2d 882 (Ind. Ct. App. 1991). “Particularity” as used in the APRA is defined as “the quality or state of being particular as distinguished from universal.” *Merriam-Webster Online*, [www.m-w.com](http://www.m-w.com), accessed July 18, 2007. Generally, it is my opinion that if an agency cannot ascertain what records an individual is seeking, the request likely did not identify the record with reasonable particularity.

Finally, I would note that the Assessor has indicated the 2008 records contain confidential information “such as social security numbers and telephone numbers” that must be removed before disclosure. While the APRA specifically declares confidential a social security number contained in the records of an agency (*See* I.C. § 5-14-3-4(a)(12)), nothing in the APRA declares a telephone number confidential. Further, the APRA contains no privacy clause allowing an agency the discretion to withhold personal telephone numbers. To the extent another state statute or federal law declares a telephone number contained in the records of the Assessor confidential, the Assessor must withhold that information from disclosure. But absent such a statute, personal telephone numbers do not constitute confidential information.

#### CONCLUSION

For the foregoing reasons, it is my opinion the Assessor has not violated the Access to Public Records Act.

Best regards,



Heather Willis Neal  
Public Access Counselor

Cc: Katherine Price, Perry Township Assessor