



STATE OF INDIANA

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February 20, 2014

Mr. Richard C. Fayette
142 W. 2nd. St.
Greensburg, IN 47240

Re: Formal Complaint 13-FC-355; Alleged Violation of the Access to Public Records Act by the Decatur County Assessor

Dear Mr. Fayette,

This advisory opinion is in response to your formal complaint alleging the Decatur County Assessor ("Assessor") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et. seq.* The Assessor, Ms. Dorene Greiwe, responded to your complaint, which is attached for your reference. 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 December 27, 2013.

BACKGROUND

Your complaint alleges the Decatur County Assessor violated the Access to Public Records Act by denying the production of records responsive to your request.

In August 2013, you submitted to the Assessor a request for an Application for a Property Tax Exception for a local church. You were told by the Assessor's Office they did not have the form you sought. On or about November 25, December 3, and December 12, 2014, you submitted a request for public records to the Assessor for minutes of the meetings of the property tax assessment board ("PTABOA") from January 2009 to November 2013, anticipating the information from the church exemption might have been referenced during one of those meetings. The first two requests were by email, the third by U.S. Postal Service. As of the filing of your formal complaint, you had not been provided with an acknowledgement pursuant to your request for minutes. You also expressed displeasure with the lack of technological capability which would allow the County to post information on the County's website for the public's edification.

The Assessor responded to your complaint on December 30, 2013. That same day, the Assessor also directly sent you an email indicating she had located the minutes of the PTABOA back to February 2011, but was still locating the remainder of the minutes.

ANALYSIS

The public policy of the APRA states that “a (p) roviding person 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 Decatur County Assessor’s Office 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).

A request for records may be oral or written. See Ind. Code § 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 Ind. Code § 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 Ind. Code § 5-14-3-9(b). A response from the public agency could be an acknowledgement the request has been received and information regarding how or when the agency intends to comply.

The Assessor concedes your email requests were never acknowledged by the Office. Whether this was due to spam quarantine or another technological hiccup, the Assessor seemingly concedes there may be some shortcomings in the process for evaluating and producing public records requests. While the tone of her email is contrite, a violation has still occurred. Every requestor is entitled to an acknowledgment of their request within the statutory timeline and production of responsive documents within a reasonable amount of time.

The Assessor appears to have not taken your formal complaint lightly and expresses several ways in which the Office’s public access protocols may be reevaluated. I sincerely hope this occurs and this type of violation will not occur in the future. In the meantime, I trust the production of all of the PTABOA minutes the Assessor has in her custody are to your satisfaction.

Additionally, all public agencies must follow the public records retention schedule set by the Indiana Oversight Committee on Public Records and administered by the Indiana Commission on Public Records. If the application form for the church and the pre-2011 minutes were destroyed, misplaced, or discarded, a violation of Ind. Code § 5-14-3-7 would have occurred which states:

- (a) A public agency shall protect public records from loss, alteration, mutilation, or destruction, and regulate any material interference with the regular discharge of the functions or duties of the public agency or public employees.
- (b) A public agency shall take precautions that protect the contents of public records from unauthorized enhanced access, unauthorized access by an electronic device, or alteration.

Agencies should be particularly mindful of this provision as destruction, manipulation or loss of public records is a serious affront to transparency and good stewardship of public information.

CONCLUSION

For the foregoing reasons, the Decatur County Assessor has violated the Access to Public Records Act, however, I encourage both parties make best efforts to work to resolve the situation in the most amicable way possible.

Regards,

A handwritten signature in black ink, appearing to read 'LH Britt', with a long horizontal flourish extending to the left.

Luke H. Britt
Public Access Counselor

Cc: Ms. Dorene Greiwe