

April 29, 2004

Mr. David Duane Penticuff
610 South Adams Street
Marion, Indiana 46953

*Re: 04-FC-57; Alleged Violation of the Access to Public Records Act by the
Grant County Assessor*

Dear Mr. Penticuff:

This is in response to your formal complaint alleging that the Grant County Assessor (Assessor) violated the Indiana Access to Public Records Act (APRA) (Ind. Code §5-14-3) when that office failed to timely respond to your request for records. A copy of the Assessor's response to your complaint is enclosed for your reference. The Assessor alleges that the office responded and produced documents responsive to your request, but does not show that the response was timely under the statute.

BACKGROUND

Your complaint alleges that you submitted a written request for records to the Assessor on March 11, 2004. You further allege that you delivered the request in person. On March 26, 2004, you signed the formal complaint in this matter. That complaint was received by this office on March 30, 2004, and alleges that you did not receive any response to your request for records. The Assessor answers the complaint acknowledging receipt of your request and asserting that the Assessor compiled the responsive documents and had them available for you in the Assessor's office "within two hours" of receiving your request. The Assessor does not make any assertion about whether, when or how this fact was communicated to you on or near the date you made your request. Rather, the Assessor states that counsel for that office contacted you on March 31, 2004, to advise you that the records were available. The Assessor further alleges that on that same date the office sent you an electronic mail advising you that your documents were ready. According to the Assessor, you retrieved the documents on April 6, 2004.

ANALYSIS

Indiana Code 5-14-3-3(a) provides that any person may inspect and copy the public records of any public agency during the regular business hours of the agency, except as otherwise provided in the APRA. IC 5-14-3-3(a). A request for records may be oral or written. IC 5-14-3-3(a); 5-14-3-9(c). If the request is made in writing, the agency must respond to the request in writing. IC 5-14-3-9(c). If the request is delivered to the agency in person, the agency must respond to the request within twenty-four (24) hours. IC 5-14-3-9(a). A timely response to

the request does not mean that the public agency must produce or expressly decline to produce the documents that are responsive to the request within the statutorily prescribed time period. Of course, a public agency is free to take either of those actions, but may also comply with its response obligation under the statute by acknowledging receipt of the request and indicating the specific actions the agency is taking toward production.

Your complaint alleges that the Assessor did not timely respond to your request. The Assessor counters that the office did respond and that it produced documents responsive to your request. However, the Assessor stops short of claiming that the response was timely. Indeed, while the Assessor alleges that the documents were ready for you within two hours of receiving the request, the Assessor does not state that this was communicated to you in any manner until March 31, 2004, when you were called and when you were sent an electronic message to that effect. The Assessor's failure to respond to your written request *in writing and within 24 hours* of receiving your request violates the APRA. IC 5-14-3-9. It does not matter that the Assessor later produced records responsive to your request, although production precludes any finding of a continuing violation. Of course, if the Assessor contacted you in writing within 24 hours of the request and advised you that the documents were ready (or otherwise communicated with you regarding the status of your request), there would be no violation of the APRA and your complaint would be meritless.

CONCLUSION

For the reasons set forth above, I find that the Assessor violated the APRA by not responding to your request in a timely manner. Because the Assessor produced documents responsive to your request, there is no continuing violation of the APRA.

Sincerely,

Michael A. Hurst
Public Access Counselor

cc: Ms. Marilyn S. Meighen