



STATE OF INDIANA

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December 22, 2009

Mr. Clark S. Scherer, RAA
820 Wood Creek Place
Greenwood, IN 46142

Re: Formal Complaint 10-FC-9; Alleged Violation of the Access to Public Records Act by the Shelby County Assessor

Dear Mr. Scherer:

This advisory opinion is in response to your formal complaint alleging the Shelby County Assessor ("Assessor") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.*, by denying you access to public records. I note that I granted your request for priority status under 62 Ind. Admin. Code 1-1-3(3).

BACKGROUND

According to your complaint, you are a licensed real estate appraiser working on an estate appraisal of a farm in Shelby County. You requested access to the property disclosure records ("Records") of farm acreage in Shelby County. The Assessor denied your request and told you that her reason for doing so was that disclosure of the Records would "expose personal phone numbers and she would be liable and subject to arrest and incarceration." She further informed you that "'they' had recommended her office not allow access to the disclosure records but did not indicate who 'they' was [sic] that made this recommendation."

Because I granted your request for priority status and issue this opinion within seven (7) days of receipt, I have not yet received a response from the Assessor regarding your allegations. I therefore issue this advisory opinion based on the information contained in your complaint.

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 a public agency under 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 exempt 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 delivered in person and the agency does not respond within twenty-four (24) hours, the request is deemed denied. I.C. § 5-14-3-9(a). A response from the public agency could be an acknowledgement that the request has been received and information regarding how or when the agency intends to comply. If a request is made orally, either in person or by telephone, a public agency may deny the request orally. I.C. § 5-14-3-9(c). Here, it appears the Assessor responded to your request in accordance with the APRA's requirements.

It is unclear why the Assessor believes the Records are nondisclosable. Absent specific statutory authority excepting the records from disclosure, the Assessor is required by the APRA to provide you with the Records responsive to your request. I.C. § 5-14-3-3. Moreover, even if the Assessor can show that some of the information in the Records is nondisclosable under the APRA, the APRA requires public agencies to separate and/or redact the nondisclosable information in public records in order to make the disclosable information available for inspection and copying. I.C. § 5-14-3-6(a). If the Assessor continues to refuse you access to the Records, the burden of proof in any court action to compel the Records is on the Assessor to show that withholding them (or redacting certain portions of them) is permissible under the APRA. I.C. § 5-14-3-9(f). If the Assessor cannot sustain its denial, it has violated the APRA.

It is my opinion that if the Assessor cannot cite specific authority that permits the Assessor to withhold all or portions of the Records, the Assessor has violated the APRA. If the APRA does not provide the Assessor with specific authority to withhold the Records, I encourage the Assessor to produce them to you as soon as practicable.

CONCLUSION

For the foregoing reasons, it is my opinion that if the Assessor denied your request without specific statutory authority for doing so, or if the Assessor failed to produce non-confidential Records with any confidential information redacted (if any), the Assessor has violated the APRA.

Best regards,



Andrew J. Kossack
Public Access Counselor

cc: Anne Thurston, Shelby County Assessor