

April 30, 2004

Ms. Trisha Shrader
110 Deer Creek Hills
Greencastle, Indiana 46135

*Re: Formal Complaint 04-FC-60; Alleged Denial of Access to Public Records
by the Putnam County Assessor*

Dear Ms. Shrader:

This responds to your formal complaint alleging that the Putnam County Assessor (Assessor) violated the Access to Public Records Act (APRA) (Ind. Code 5-14-3-1 *et seq.*), when that office failed to properly respond to your request for public records and where the response it did provide sought to collect a fee that is not authorized by statute. A copy of the Assessor's response to your complaint is enclosed for your reference. For the reasons set forth below, I find that the Assessor violated the APRA.

BACKGROUND

On March 18, 2004, you submitted three written requests for public records to the Assessor seeking information regarding new construction, the Assessor's budgets, the county's fee schedule for records, minutes of meetings and a notice of meeting for the Putnam County Real Estate Board, and various bids and contracts. The Assessor did not provide you with any written response, but staff from that office informed you that at least one of the responsive records would be produced only upon receipt of a flat fee of \$15.00 for the record. This complaint followed. You assert violations of the APRA based on the Assessor's failure to provide a written response to all of your requests and the Assessor's attempt to charge a fee not authorized by statute. The Assessor responds by acknowledging the impropriety of the flat fee and stating that copies of the responsive documents are available and will be produced pursuant to a fee schedule adopted by the county charging \$0.20 per page. The Assessor further acknowledges that the office did not provide you with a written response to your request, but asserts that your requests invited an oral response. The Assessor states that you failed to return her telephone call.

ANALYSIS

I first address the fee issue. Indiana Code 5-14-3-8(d) permits local public agencies to charge a fee for copies of public records, and to set that fee in a fee schedule adopted by the fiscal body or by the public agency's governing body. However, the fee

may not include labor or overhead, and may not exceed the actual cost of the copy. IC 5-14-3-8(d). "Actual cost" is expressly defined as meaning "the cost of paper and the per-page cost for use of copying ... equipment." IC 5-14-3-8(d). The Assessor acknowledges that a flat fee of \$15.00 for a responsive record does not comply with the statute, and documents submitted with the Assessor's response to your complaint show that the fee was not established with regard to a calculation of actual cost as required by the statute. The Assessor states that the fee is no longer being assessed in that jurisdiction, and will not be assessed for any of the documents produced in response to your request. To be certain, a \$15.00 flat fee is illegal under the statute, and may not be assessed for a responsive record.¹

Turning to your other claims, I agree that the Assessor's failure to timely respond to your request in writing was a violation of the APRA. A public agency that receives a written request for public records is required to respond to that request in writing. IC 5-14-3-9(c)(1). The Assessor did not respond to your written requests in writing. While the Assessor asserts that you invited an oral response, I do not read your requests to do more than invite a statement of the cost. Even if I construed the requests to invite an oral response, I would not consider the Assessor's phone call sufficient to meet the agency's burden. The Assessor states that you did not return her call, but she does not say whether or how she left a message for you to do so. Even so, the APRA puts the burden of response and production on the agency. An agency cannot satisfy this burden by responding to a written request with a voicemail. While making a courtesy call was surely reasonable, the Assessor was required to send you a written response. Even more so was the Assessor's obligation when the courtesy call was not returned. I would no more consider a phone message a sufficient response to a written request for records than I would consider a phone message to a public agency to be a sufficient request for public records.

While I find that the Assessor's failure to submit a written response to be a violation, I note that the Assessor has now responded as her answer to this complaint that she stands ready to produce all of the records responsive to your requests. Assuming production is made, and subject to the fee charged being no more than the actual cost of the copies, I find no continuing violation of the APRA.

CONCLUSION

For the reasons set forth above, I find that the Assessor violated the APRA by failing to respond to your requests in writing. I further find that the copy fee of \$15.00 would be in violation of the APRA, but note that the Assessor appears not to intend to

¹ No complaint is made and I offer no opinion here regarding the per-page cost as otherwise supported by the fee schedule provided by the Assessor. For purposes of this opinion I note only that this fee, if not calculated on the "actual cost" of the copy as defined by the APRA would also be illegal and the violation subject to civil action in a court of competent jurisdiction pursuant to Indiana Code 5-14-3-9. Should you prevail in any such action, the Assessor would be responsible for not only refunding any payment made in excess of the actual cost, but also for paying your attorney fees and the reasonable costs of the litigation.

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charge that fee and that the Assessor stands ready to produce the responsive documents thus avoiding any further violation of the statute.

Sincerely,

Michael A. Hurst
Public Access Counselor

cc: Ms. Wanda O'Neal