

June 9, 2004

Mr. Bradley S. Le Boeuf
333 South Main Street, Suite 509
Akron, Ohio 44308

*Re: 04-FC-82; Alleged Violation of the Access to Public Records Act by the
Indiana Department of Local Government Finance*

Dear Mr. Le Boeuf:

This is in response to your formal complaint alleging that the Indiana Department of Local Government Finance (DLGF) violated the Indiana Access to Public Records Act (APRA) (Ind. Code §5-14-3) when it failed to timely respond to your request for records. The DLGF did not submit a written answer to the allegations of your complaint, but did copy this office on its subsequent production in response to your record request. A copy of that production is enclosed with this opinion. For the reasons set forth below, I find that the DLGF did not timely acknowledge your request for records, but I further conclude that its subsequent production was made within a reasonable period of time and precludes any finding of a continuing violation.

BACKGROUND

On April 16, 2004, you submitted your written record request to the DLGF. Your request, submitted by United States Certified Mail, Return Receipt Requested, sought Indiana State Sales Disclosure Forms for Gary, Indiana, property zoned commercial and industrial. The request sought responsive records for the years 1998 and 1999. A copy of the return receipt shows that the DLGF received your request, although the date of receipt is not completed on the return receipt. In any event, it appears that the request was received prior to April 21, 2004, when the signed receipt was returned to you. Your complaint alleges that you did not receive any written response to your record request in violation of the APRA. The DLGF did not submit a written response to the allegations of your complaint; however, on May 15, 2004, this office was copied on that agency's production submitted to you in response to your record request. The cover letter on that production stated that the forms you requested were no longer in the possession of the DLGF but rather had been returned to the township assessors. The letter covered an "excel spreadsheet detailing data from sales disclosure forms (commercial and industrial only) from 1998 and 1999 for Calumet and Hobart Townships (Gary) in Lake County." That letter further indicated that you discussed this production with the DLGF and considered it satisfactory. In any event, you have not submitted any new allegations challenging this production.

ANALYSIS

A public agency that receives a request for records under the APRA has a specified period of time to respond to the request. IC 5-14-3-9. A timely response to the request does not mean that the public agency must expressly decline to produce or 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. When a public record request is made in writing and delivered to the public agency by mail or facsimile, the public agency is required to respond to that request within seven (7) days of *receipt* of the request. IC 5-14-3-9(b). If that period of time elapses without a response, the request is presumed denied. IC 5-14-3-9(b).

Here, you have provided evidence that the DLGF received your written request but failed to timely respond by sending you a written acknowledgment within seven days of receipt. The DLGF does not contest your allegation or your evidence. Accordingly, I find that the DLGF did not submit a timely response pursuant to Indiana Code 5-14-3-9(b).

That said, the DLGF did respond by producing the information you requested and to your apparent satisfaction. That production, which purports to be a compilation of information from forms that are no longer in the possession of the public agency, was submitted to you on May 15, 2004, only 30 days after the date of your request. In my opinion, the production occurred within a reasonable time and did not violate the APRA in that regard. Further, because the production indicates that it was made in that form with your assent and to your satisfaction, and because you have submitted no allegations to the contrary, I find that the production satisfies the DLGF's obligations under the statute.

CONCLUSION

For the reasons set forth above, I find that the DLGF failed to timely acknowledge your request for records, but its subsequent production was made within a reasonable time and otherwise satisfied the requirements of the APRA.

Sincerely,

Michael A. Hurst
Public Access Counselor

cc: Mr. Dan Mathis