



STATE OF INDIANA

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November 25, 2009

Mr. Rodney Scott
1947 E. Spring St.
New Albany, IN 47150

Re: Formal Complaint 09-FC-252; Alleged Violation of the Access to Public Records Act by the Clark County Assessor

Dear Mr. Scott:

This advisory opinion is in response to your formal complaint alleging the Clark County Assessor ("Assessor") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.*, by failing to produce records responsive to your request within a reasonable amount of time. For the following reasons, my opinion is that the Assessor has not violated the APRA.

BACKGROUND

In your complaint, you allege that on October 9, 2009, you requested a copy of an appraisal from the Assessor. On October 13, 2009, the Assessor denied your request alleging the record was confidential under the Gramm-Leach-Bliley Act ("GLBA"). On October 14, 2009, you responded to that denial and renewed the records request on the basis that the records sought were not covered by the GLBA. On October 20, 2009, you received an email from Charlie Mills, a private appraiser who prepared the appraisal for purposes of property tax assessment. Mr. Mill purportedly claimed that the document is confidential under the Uniform Standards of Professional Practice ("USPAP"). You argue that the USPAP applies only to an appraiser's duty of confidentiality but does not apply to public officials.

My office forwarded a copy of your complaint to the Assessor. Vicki Kent-Haire responded via telephone on behalf of her office. Ms. Kent-Haire states that she did not deny your request. She explained that she is short staffed and her office has been overwhelmed with property tax appeals and recent property tax billings. According to Ms. Kent-Haire, her staff has been working overtime on these projects but has still not had time to copy your record within the normal business hours of the office. Ms. Kent-

Haire further states that she informed you that you were free to send someone from your office to pick up the appraisal, sign it out, and make your own copies if you preferred.

ANALYSIS

The public policy of the APRA states that “(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. Any person has the right to inspect and copy the public records of a public agency 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). The Assessor is a public agency for the purposes of the APRA. I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy the Assessor’s public records during regular business hours unless the records fall within one of the APRA’s exceptions to disclosure. I.C. § 5-14-3-3(a).

Ms. Kent-Haire does not dispute that the appraisal is a public record subject to disclosure. Therefore, I see no reason to address the issue of whether the GLBA or USPAP permits the Assessor to withhold it.

You and Ms. Kent-Haire do apparently disagree, however, about whether or not the Assessor has failed to produce the appraisal to you within a reasonable period of time. There are no prescribed timeframes when records must be produced by a public agency. The public access counselor has stated repeatedly that records must be produced within a reasonable period of time, based on the facts and circumstances. To determine whether the agency has produced records within a reasonable timeframe, it is necessary to consider factors such as the nature of the requests (whether they are broad or narrow), how old the records are, and whether the records must be reviewed and edited to delete nondisclosable material. Section 7 of the APRA requires a public agency to regulate any material interference with the regular discharge of the functions or duties of the public agency or public employees. I.C. §5-14-3-7(a). However, Section 7 does not operate to deny to any person the rights secured by Section 3 of the Access to Public Records Act. I.C. §5-14-3-7(c).

You made your initial request on October 9, 2009, and filed your complaint on October 22, 2009. Based on what Ms. Kent-Haire has told me, her office’s staff is struggling to handle an unusually heavy workload. In such circumstances, it is my opinion that the Assessor’s failure to produce the record within those thirteen (13) days was not unreasonable. Moreover, the Assessor acted reasonably when she made the record available for you to inspect and copy at your convenience as an alternative to you waiting for the Assessor to make copies for you. However, I note that this is a close call where a further delay by the Assessor would be, in my opinion, unreasonable. If you cannot or do not want to make your own copies of the appraisal, I see no reason why the Assessor could not make your requested copies available on or before December 11, 2009. I have no authority to compel the Assessor to make copies for you, but I urge the Assessor to do so as soon as is reasonable and practical.

CONCLUSION

For the foregoing reasons, it is my opinion that the Assessor has not violated the APRA.

Best regards,

A handwritten signature in black ink that reads "Andrew J. Kossack". The signature is written in a cursive style with a large, sweeping initial 'A'.

Andrew J. Kossack
Public Access Counselor

Cc: Vicki Kent-Haire, Clark County Assessor