



STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

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August 31, 2011

Ms. Debra A. Jones
720 W U.S. Highway 20
Michigan City, Indiana 46360

Re: Formal Complaint 11-FC-181; Alleged Violation of the Access to Public Records Act by the Porter County Assessor's Office

Dear Ms. Jones:

This advisory opinion is in response to your formal complaint alleging the Porter County Assessor's Office ("Assessor") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* A copy of your complaint was forwarded to the Assessor. As of today, we have not received a response.

BACKGROUND

In your complaint, you allege that you have made three separate records requests, in person and in writing, to the Assessor and have yet to receive any records responsive to your request. The three requests you made to the Assessor were as follows:

- (1) On June 17, 2011, you requested orally and in writing all hearing/meeting agendas from the Porter County Property Tax Assessment Board of Appeals ("PTABOA") from January 2010 through December 2010.
- (2) On June 17, 2011, you requested orally and in writing the minutes of the June 14, 2010 PTABOA hearing/meeting.
- (3) On July 15, 2011, you requested orally and in writing the minutes of the June 3, 2010 PTABOA hearing/meeting and minutes of any PTABOA hearing involving property owned by Bulk Transport Corporation if June 3, 2010 was not the correct date regarding the Form 130 appeal.

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.” *See* I.C. § 5-14-3-1. The Assessor is a public agency for the purposes of the APRA. *See* 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 are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. *See* I.C. § 5-14-3-3(a).

A request for records may be oral or written. *See* 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 24 hours, the request is deemed denied. *See* I.C. § 5-14-3-9(a). If the request is delivered by mail or facsimile and the agency does not respond to the request within seven (7) days of receipt, the request is deemed denied. *See* I.C. § 5-14-3-9(b). Under the APRA, when a request is made in writing and the agency denies the request, the agency must deny the request in writing and include a statement of the specific exemption or exemptions authorizing the withholding of all or part of the record and the name and title or position of the person responsible for the denial. *See* I.C. § 5-14-3-9(c). 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.

The APRA does not prescribe timeframes for the actual production of records. The public access counselor has stated repeatedly that records must be produced within a reasonable period of time, based on the facts and circumstances of the request. Considering 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 is necessary to determine whether the agency has produced records within a reasonable timeframe. 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. *See* 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. *See* I.C. § 5-14-3-7(c). The ultimate burden lies with the public agency to show the time period for producing documents is reasonable. *See Opinion of the Public Access Counselor 02-FC-45.*

Without the benefit of a response from the Assessor, it is unclear to me why your request was denied. Under the APRA, a public agency that withholds a public record bears the burden of proof to show that the record is exempt. *See* I.C. §§ 5-14-3-1, 5-14-3-9(f) and (g). Exceptions to disclosure are narrowly construed. *See* I.C. § 5-14-3-1. As the Assessor has not provided a justification for withholding the records at issue here, it is my opinion that it has failed to sustain its burden.

If the Assessor cannot justify withholding the records under the APRA, I encourage the Assessor to release the records to you as soon as possible. To the extent the Assessor persists in its denial of access following the issuance of an advisory opinion from this office and you believe the Assessor to be in violation of the APRA, I leave you to your remedies before a court pursuant to I.C. § 5-14-3-9(e).

CONCLUSION

For the foregoing reasons, it is my opinion that the Assessor did violate the APRA.

Best regards,

A handwritten signature in black ink, appearing to read "J. Hoage". The signature is written in a cursive style with a large initial "J" and a long, sweeping underline.

Joseph B. Hoage
Public Access Counselor

cc: Porter County Assessor's Office