



STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

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July 30, 2012

Mr. Raymond Curtis
P.O. Box 758
Beverly Shores, Indiana 46301

Re: Formal Complaint 12-FC-199; Alleged Violation of the Access to Public Records Act by the Calumet Township Assessor

Dear Mr. Curtis:

This advisory opinion is in response to your formal complaint alleging the Calumet Township Assessor ("Assessor") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Jacquelyn Collins, Calumet Township Assessor, responded in writing to your formal complaint. Her response is enclosed for your reference.

BACKGROUND

In your formal complaint, you allege that on July 6, 2012, you inquired with the Assessor's office regarding records pertaining to property located at 6401 Melton Road, Gary, Indiana 46403. You requested copies of the record from 2008-2010 in order to cure a purported defect that exists in the Form 131 filings according to the Indiana Board of Tax Review. After receiving from you the original Form 131 records and correspondence, you further allege that Mr. Bennett from the Assessor's Office informed you that your records had been lost. You were not allowed to inspect or make copies of any of the records that had been requested.

In response to your formal complaint, Ms. Collins advised that all real property files within the jurisdiction of the Calumet Assessor's office are available to the public. On July 19, 2012, Ms. Collins spoke with you regarding your request and it appeared there was a misunderstanding regarding what records you were specifically inquiring about. You were originally informed that the Assessor did not have any records that were responsive to your request; however the Assessor has now determined that it overlooked certain records that were responsive. The records are available to be picked up at your convenience from the Assessor's Office and copies of said record are enclosed. Ms. Collins apologized for any inconvenience caused by the misunderstanding.

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 include information regarding how or when the agency intends to comply.

Generally, if a public agency has no records responsive to a public records request, the agency does not violate the APRA by denying the request. “[T]he APRA governs access to the public records of a public agency that exist; the failure to produce public records that do not exist or are not maintained by the public agency is not a denial under the APRA.” *Opinion of the Public Access Counselor 01-FC-61*; *see also Opinion of the Public Access Counselor 08-FC-113* (“If the records do not exist, certainly the [agency] could not be required to produce a copy....”). Moreover, the APRA does not require a public agency to create a new record in order to satisfy a public records request. *See Opinion of the Public Access Counselor 10-FC-56*. Here, the Assessor originally informed you that it retained no records that were responsive to your request. Thereafter, a further search was conducted and the Assessor has now made available all records that were responsive to your request. Thus, it is my opinion that the Assessor acted contrary to the requirements of the APRA by failing to provide all records that were responsive to your request. However, as the Assessor has now rectified the error, I trust that this is in satisfaction of your formal complaint. Although not addressed by the Assessor in its response, I assume that the confusion regarding the original records presented to the Assessor by you on July 6, 2012 has been addressed and/or the records have been returned to you.

CONCLUSION

For the foregoing reasons, it is my opinion that the Assessor acted contrary to the APRA by failing to provide all records that were responsive to your request. As the Assessor has now provided all records maintained by the agency, I trust that this is in satisfaction of your formal complaint.

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 distinct "Hoage" following.

Joseph B. Hoage
Public Access Counselor

cc: Jacquelyn Collins