



STATE OF INDIANA

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OPINION OF THE PUBLIC ACCESS COUNSELOR

AARON SUOZZI)

Complainant)

v.)

KOSCIUSKO COUNTY)
ASSESSOR)

Respondent)

16-FC-306

ADVISORY OPINION

January 27, 2017

This advisory opinion is in response to your formal complaint alleging the Kosciusko County Assessor (“Assessor”) violated the Access to Public Records Act (“APRA”), Indiana Code § 5-14-3-1 *et. seq.* The Assessor responded to the complaint via Mr. Chad Miner, Esq. His response is enclosed for your review. Pursuant to Indiana Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on December 12, 2015.

BACKGROUND

The complaint dated December 5, 2016, alleges the Kosciusko County Assessor (“Assessor”) has violated the APRA by not acknowledging a record request nor by providing the Complainant with the documents requested.

Complainant sent a records request to the Assessor for a property record card on a specific parcel. The request was denied as the Assessor considers the property card deliberative before it is certified by the Department of Local Government Finance (DLGF). After that process is complete, the property card will be disclosed.



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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 Indiana Code § 5-14-3-1*. The Kosciusko County Assessor’s Office is a public agency for the purposes of the APRA. *See Indiana Code § 5-14-3-2(m)(1)*. Accordingly, any person has the right to inspect and copy the Assessor’s disclosable public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. *See Indiana Code § 5-14-3-3(a)*.

Here, the Clerk cites the deliberative materials exception to the APRA as its legal basis for refusing to disclose the Report. The deliberative materials exception is found at Indiana Code § 5-14-3-4(b)(6):

(b) Except as otherwise provided by subsection (a), the following public records shall be excepted from section 3 of this chapter at the discretion of a public agency:

...

(6) Records that are intra-agency or interagency advisory or deliberative material, including material developed by a private contractor under a contract with a public agency, that are expressions of opinion or are of a speculative nature, and that are communicated for the purpose of decision making.

Tax assessments by their very nature contain an element of subjectivity. While there are certainly objective factors of an assessment, they are largely the opinion of an assessor based upon a formula and details unique to each assessor and the communities and properties they assess. The valuation process goes through several steps. The first of those steps is an oversight review by the Department of Local Government Finance. During the predeterminative stage, the assessment can change. A property card is not official until it goes through several checks and balances.

I am not aware how the Complainant was made aware of the changes in assessment data – whether it be through a Form 11 or otherwise. In any case, the property valuation is not complete and the decision-making process remains in progress. The purpose of the deliberative materials exception to disclosure is to prevent injury to the decision-making process. If every step of that process were to be scrutinized in real time through the public records request mechanism, it would certainly inhibit the ability of the Assessor to perform her duties. The assessment process is certainly subject to scrutiny, however, that is done once an assessment is official and complete. The law provides several appeal and review



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opportunities for both regulatory authorities and the affected taxpayer. The decision-making process must be allowed to run its course first.

It is my opinion the Assessor is not attempting to 'hide' information, as the Complainant suggests. Indeed, it would be difficult to hide when there are so many checks in the system – DLGF, the County Auditor, PTABOAs, the Indiana Board of Tax Review, etc. An affected taxpayer should be provided all materials requested once the decision-making process has run its course. In the predeterminative stages, however, the data may be kept in-house as a decision has not been made and the taxpayer has not yet been affected by the draft property card.

CONCLUSION

Based on the foregoing, it is the Opinion of the Public Access Counselor the Kosciusko County Assessor has not violated the Access to Public Records Act.

A handwritten signature in black ink, appearing to read "LH Britt", written in a cursive style.

Luke H. Britt
Public Access Counselor

Distribution:

Mr. Chad Miner, Esq.