



STATE OF INDIANA

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March 25, 2020

The Times of Northwest Indiana
Lauren Cross, North Lake County Reporter
601 W. 45th Avenue
Munster, IN 46321

Re: Informal Opinion 20-INF-3; Redevelopment Commission Appraisals

Dear Ms. Cross,

This informal opinion is in response to your inquiry about whether the Gary Redevelopment Commission may withhold from public disclosure certain records related to the appraisal of a publicly owned property. In accordance with Indiana Code section 5-14-4-10(5), I issue the following informal opinion to your inquiry.

BACKGROUND

After learning that the Gary Redevelopment Commission ("Commission") had public property appraised prior to announcing that the Commission would be accepting bids for a public parcel, you requested copies of the property appraisals, specifying that a redacted version would be acceptable. The Commission denied your request, citing a concern that disclosure would reveal to the public who the Commission hired to conduct the appraisal and the final appraised value of the property. The Commission also refused to provide any documentation proving the appraisal took place. As a result, you presented the following question to this office in your informal inquiry:

Should [the Commission] be able to redact who they hire for appraisals and the appraised value when the work is paid for with taxpayer dollars?

After receiving a copy of your informal complaint, attorney Trent McCain, counsel for the Commission, responded to the assertion that the Commission violated the Access to Public Records Act. McCain asserts that the Commission's actions were lawful and cites Indiana Code section 36-7-14-22(b), which requires the Commission to get two separate and independent appraisals before selling or leasing a property. The statute also says the appraisals are "solely for the information of the commission, and are not open for public inspection."

ANALYSIS

1. The Access to Public Records Act

The Access to Public Records Act (“APRA”) expressly states that “it is the public policy of the [State of Indiana] that all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees.” Ind. Code § 5-14-3-1. APRA generally governs access to public records in Indiana.

Public records are presumptively disclosable unless an exception applies. Under APRA, “public record” means:

any writing, paper, report, study, map, photograph, book, card, tape recording, or other material that is created, received, retained, maintained, or filed by or with a public agency and which is generated on paper, paper substitutes, photographic media, chemically based media, magnetic or machine readable media, electronically stored data, or any other material, regardless of form or characteristics.

Ind. Code § 5-14-3-2(r). Here, the appraisals you requested are public records for purposes of APRA. Even so, APRA has both mandatory and discretionary exceptions to disclosure. *See* Ind. Code § 5-14-3-4(a)–(b). The question is whether one of the exceptions to disclosure applies to the property appraisals you requested.

2. Redevelopment Commission appraisals

Typically, under APRA, property appraisals are disclosable upon request. Certain methodology and intellectual property of the appraiser may be redacted, but the appraised value is generally disclosable.

At the same time, Indiana Code section 36-7-14-22(b) exempts the entirety of the appraisals in areas needing redevelopment from public disclosure. In relevant part, the statute states:

Before offering for sale or lease to the public any of the real property acquired, the redevelopment commission shall cause two (2) separate appraisals of the sale value, or rental value in case of a lease, to be made by independent appraisers... *The appraisals are solely for the information of the commission, and are not open for public inspection.*

Id. (Emphasis added). Based on the information provided, it appears the Commission is authorized by statute to withhold the appraisals from disclosure. APRA expressly incorporates in its disclosure exceptions “records declared confidential by state statute.” Ind Code § 5-14-3-4(a)(1). To the extent the Commission did not cite these statute in its original denial, it should do so going forward because APRA requires it. *See* Ind. Code § 5-14-3-9(d)(2)(A).

CONCLUSION

In sum, a redevelopment commission may withhold from disclosure an appraisal conducted in accordance with Indiana Code section 36-7-14-22(b).

Please do not hesitate to contact me with any questions.

Best regards,

A handwritten signature in black ink, appearing to read 'LH Britt', with a stylized flourish at the end.

Luke H. Britt
Public Access Counselor