

May 6, 2004

Mr. Timothy T. Long  
2745 West County Road 1500 North  
Carbon, Indiana 47837-8046

*Re: 04-FC-64; Alleged Violation of the Access to Public Records Act by the  
Clay County Assessor*

Dear Mr. Long:

This is in response to your formal complaint alleging that the Clay County Assessor (Assessor) violated the Indiana Access to Public Records Act (APRA) (Ind. Code §5-14-3) when that office failed to timely respond to your request for records. The Assessor's response to your complaint is enclosed for your reference.

#### BACKGROUND

On March 23, 2004, you submitted a written request for records to the Assessor and delivered that request by certified mail. The return receipt shows that the Assessor received the request on March 25, 2004. Your request sought records containing information regarding all property assessments and reassessments for property located at the above address, including dates, formulas utilized, description of property and structures, and assessed values. Your request also sought a copy of the "Property card" for the property. On April 5, 2004, having received no response to the request, you prepared and submitted the instant complaint. The complaint, received on April 7, 2004, alleges that the Assessor's failure to respond constitutes a violation of the APRA. Your complaint seeks priority status and expedited review.<sup>1</sup> The Assessor responds to your complaint and shows that on April 21, 2004, that office provided you with a copy of the property card for the property in question. The Assessor suggests but stops short of stating that he previously provided you with that or any other records responsive to your request. The Assessor's letter further suggests, but does not expressly state that the property card is the only record responsive to your request. In a letter to this office submitted after you filed your complaint, you acknowledge receipt of the property card but assert that this record is not responsive to your request.

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<sup>1</sup> On April 14, 2004, I advised you and the Assessor that your request for expedited review was denied on the basis that you do not meet the statutory criteria for priority status. *See* 62 IAC 1-1-3.

## ANALYSIS

A public agency that receives a request for records under the APRA has a specified period of time to respond to the request. IC 5-14-3-9. A timely response to the request does not mean that the public agency must expressly decline to produce or produce the documents that are responsive to the request within the statutorily prescribed time period. Of course, a public agency is free to take either of those actions, but may also comply with its response obligation under the statute by acknowledging receipt of the request and indicating the specific actions the agency is taking toward production. When a public record request is made in writing and delivered to the public agency by mail or facsimile, the public agency is required to respond to that request within seven (7) days of *receipt* of the request. IC 5-14-3-9(b). If that period of time elapses without a response, the request is presumed denied. IC 5-14-3-9(b).

The Assessor responded to your complaint and does not deny receipt of your written request or that the office failed to respond to that written request. The Assessor suggests that the office previously provided you with a copy of your property card when you visited that office in the past. Assuming that the Assessor had previously provided you with a property card on a prior occasion, the office was at least required to respond to your subsequent written request to state that fact. *See* IC 5-14-3-8(e), 5-14-3-9(b), (9)(c). The Assessor's failure to respond to your written request within seven days of receipt violates the APRA.

The Assessor shows and you now acknowledge that you received a copy of the property card for your property on April 21, 2004. You assert that this record is "newly created" and does not otherwise respond to your request. A copy of the record shows that it was "printed" from the Assessor's computer on April 19, 2004. I do not think that this means that the record was "newly created," but neither do I think that matters. It is a property card and it is responsive to at least one of the items requested in your record request. While this subsequent production does not remedy the Assessor's violation for failure to *timely* respond, I find that the Assessor has now produced at least one of the records subject to your request, and that office is not in continuing violation of the APRA at least with respect to that record.

You do not provide a copy of any correspondence that may have covered that production setting forth any statement regarding the balance of your request. And, although the Assessor's response to your complaint can be read to imply that it does not maintain any other records that are responsive to your request, the Assessor stops short of making that averment. It may well be that the other information you are seeking is either maintained on the property card you received, or does not exist in any other record maintained by the office. If that is the case, there would be no continuing violation of the APRA. However, if the Assessor maintains any other records that contain the information sought by your request, the Assessor's failure to tender those records, subject to any applicable exemptions to production, constitutes a continuing violation of the APRA.

CONCLUSION

For the reasons set forth above, I find that the Assessor's failure to timely respond to your request for records violates the APRA. I further find that the Assessor's subsequent production of the property card precludes any finding of a continuing violation at least with respect to that record. If the Assessor is in possession of any other records containing the information sought in your request, the Assessor's failure to tender those records subject to any applicable exemptions violates the APRA.

Sincerely,

Michael A. Hurst  
Public Access Counselor

cc: Mr. C.R. Boyd