

May 14, 2004

Mr. David Paul Allen
5231 Hohman Avenue, Suite 703
Hammond, Indiana 46320

*Re: 04-FC-69; Alleged Violation of the Access to Public Records Act by the
Lake County Treasurer*

Dear Mr. Allen:

This is in response to your formal complaint alleging that the Lake County Treasurer (Treasurer) 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 Treasurer did not submit a written answer to your complaint, but did advise this office by telephone and through counsel that it failed to timely respond and that it subsequently submitted to you a substantive response with production of the only documents it maintains that are responsive to your request. For the reasons set forth below, I find that the Treasurer's failure to timely respond to your request for records violates the APRA. The Treasurer's subsequent production, assuming that production was completed as promised, precludes any finding of a continuing violation.

BACKGROUND

According to your complaint, on April 2, 2004, you submitted a written request for records to the Treasurer. Your request sought records "showing the location (financial institution and account no.), balances, and interest earnings (by percentage rate and gross amounts) on ... tax sale surplus funds from September 30, 1998, through March 31, 2004." You further requested that the information be provided to you as "quarterly (rather than monthly or annual) reports." The Treasurer received your written request on April 5, 2004. On April 14, 2004, having received no response to the request, you prepared and submitted this complaint challenging the Treasurer's failure to respond.

The Treasurer did not submit a written answer to your complaint. However, on May 11, 2004, the Treasurer and Treasurer's counsel contacted this office by telephone and acknowledged that the Treasurer failed to timely respond to your request in writing. The Treasurer further indicated that on that same day that office was sending you a written response to your request accompanied by production of the only records it maintains that are responsive to your request.

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).

Here, you have provided evidence that the Treasurer received your written request on April 5, 2004. Accordingly, the Treasurer's written response acknowledging your request and at a minimum indicating the office's intent toward compliance was due to be returned to you on or before April 12, 2004. The Treasurer acknowledges that a timely written response was not prepared and submitted. The Treasurer's failure to respond to your request on or before April 12, 2004, violates the APRA.

The Treasurer's continuing failure to respond to the request and failure to produce any nonconfidential responsive records maintained by that office would constitute continuing violations of the APRA. That said, the Treasurer advised this office on May 11, 2004, that the Treasurer's office was responding to your request on that date and producing all of the records it maintains that are responsive to your request.¹ While that subsequent production, assuming it occurred and was complete, would not remedy the violation for failing to timely respond, it precludes any finding of a continuing violation of the APRA.

CONCLUSION

For the reasons set forth above, I find that the Treasurer's failure to timely respond to your request for records violates the APRA.

Sincerely,

Michael A. Hurst
Public Access Counselor

cc: Ms. Peggy Katona

¹ The Treasurer indicated to this office that it does not maintain records containing all of the information you requested or in the form requested. A public agency is only required to produce the public records of that agency, and the APRA does not require it to create a record that is responsive to a record request, or to compile the information requested in a specific form.