



STATE OF INDIANA

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**PUBLIC ACCESS COUNSELOR
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May 22, 2013

Frank R. Martinez III
9180 Doubletree Drive South
Winfield, Indiana 46307

Re: Formal Complaint 13-FC-137; Alleged Violation of the Access to Public Records Act by the Lake County Assessor

Dear Mr. Martinez:

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

BACKGROUND

In your formal complaint, you provide that on January 17, 2013 you submitted a written request for records to the Assessor. As of May 7, 2013, the date you filed your formal complaint with the Public Access Counselor's Office, you further allege that you have yet to receive any response from the Assessor.

In response to your formal complaint, Mr. Adams advised that Gina Steward, Chief Deputy Assessor, spoke with you on several occasions regarding your request and provided via email the requested information. Ms. Adams informed you at that time to let the agency know if you had any further issues or requests. Since that time, the Assessor has not received any further correspondence from you.

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 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). 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. The public access counselor is not a finder of fact. Advisory opinions are issued based upon the facts presented. If the facts are in dispute, the public access counselor opines based on both potential outcomes. *See Opinion of the Public Access Counselor 11-FC-80*. Here, you have provided that the Assessor has failed to respond in any fashion to the request that was submitted. In response, the Assessor has provided that it spoke with you on several occasions regarding your request and provided all information maintained by the agency that was responsive to your request via email. As such, if the Assessor failed to respond in any fashion to your request, it acted contrary to section 9 of the APRA. Alternatively, if the Assessor provided all records responsive to your request, it did not violate the APRA. As the parties are now aware that there has been a miscommunication regarding the response provided by the Assessor, I would encourage you to contact the Assessor so the alleged deficiency can be remedied.

CONCLUSION

For the foregoing reasons, it is my opinion that if the Assessor failed to respond in any fashion to your request, it acted contrary to section 9 of the APRA. Alternatively, it is my opinion that if the Assessor provided all records responsive to your request, it did not violate the APRA.

Best regards,

A handwritten signature in black ink, appearing to read "J. Hoage". The signature is stylized with a large initial "J" and a cursive "Hoage".

Joseph B. Hoage
Public Access Counselor

cc: Hank Adams