



STATE OF INDIANA

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January 20, 2015

Mr. Douglas G. Opdycke
P.O. Box 3205
Bonita Springs, FL 34133

Re: Formal Complaint 14-FC-322; Alleged Violation of the Access to Public Records Act by the Dekalb County Assessor's Office

Dear Mr. Opdycke,

This advisory opinion is in response to your formal complaint alleging the Dekalb County Assessor's Office ("Assessor"), violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et. seq.* Counsel, Mr. James P. McCanna, Esq., has responded and his reply is attached for your review. Pursuant to Ind. Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor December 23, 2014.

BACKGROUND

Your complaint dated December 18, 2014 alleges the Dekalb County Assessor's Office violated the Access to Public Records Act (Ind. Code § 5-14-3) by failing to produce records responsive to your request.

Between October 30 and November 8, 2014 you submitted two public records request(s) to the Assessor seeking your parent's estate documents. You included names, date(s) of death and the cause numbers of their estate proceedings. On December 3, 2014, the Assessor informed you that a search for those records was unsuccessful and the current Assessor does not maintain the documents; however, they may be with the Court which handled the estate.

The Assessor responded to your formal complaint reaffirming that a search was conducted; however, the Assessor is not the custodian of the records you seek.

ANALYSIS

The public policy of the APRA states that “a (p)roviding person 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 Ind. Code § 5-14-3-1. The Dekalb County Assessor’s Office (Assessor) is a public agency for the purposes of the APRA. See Ind. Code § 5-14-3-2(n)(1). Any person has the right to inspect and copy the Assessor’s public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. See Ind. Code § 5-14-3-3(a).

It appears as if the Assessor undertook a good faith search for the documents; however, the current Assessor’s office does not maintain a copy of the records you seek. A public agency is not required to create records responsive to a request or produce records they do not maintain. The estate documents you seek are likely with the court which handled the proceedings. Under the local retention schedule for Indiana local governments, estate documents are not listed. It can be viewed at:

http://www.in.gov/icpr/files/county_general.pdf.

Under Indiana Administrative Court Rule 6; however, probate and estate files are to be retained permanently. If the estate was administered in the Dekalb Court with probate jurisdiction, it should be available for inspection and copying. It is my sincere hope you are able to retrieve these records from the Court.

CONCLUSION

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

Regards,



Luke H. Britt
Public Access Counselor

Cc: Mr. James P. McCanna, Esq.