



# STATE OF INDIANA

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July 31, 2009

Tom Terry  
3804 West Allen Court  
Muncie, Indiana 47304

*Re: Formal Complaint 09-FC-154; Alleged Violation of the Access to Public Records Act by the Delaware County Property Tax Assessment Board of Appeals*

Dear Mr. Terry:

This advisory opinion is in response to your formal complaint alleging the Delaware County Property Tax Assessment Board of Appeals ("PTABOA") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by denying you access to records. The PTABOA's response to the complaint is enclosed for your reference. It is my opinion the PTABOA violated the APRA by failing to respond to your request within twenty-four hours but did not otherwise violate the APRA.

## BACKGROUND

You allege that on June 12, 2009 you hand-delivered to the PTABOA a request for a copy of the tax policies and procedures for Delaware County as well as other records. You filed the present complaint on July 7 (postmarked on July 2), alleging you had received no response to the request.

The PTABOA responded to the complaint by letter dated July 20 from attorney Beth Henkel. The PTABOA provides detail regarding several requests you have made to the agency, through the County Assessor's office, during the 2009 calendar year. Regarding your June 12 request, which is the subject of this complaint, the PTABOA responded to you by letter dated July 7. In the July 7 letter, the PTABOA responded to your request for copies of pages 1 and 2 of the Form 130 forms and page 1 of the forms for tax appeals which have had preliminary hearings by contending the files are maintained in such a way that it would be a great undertaking for the office to provide you access to the records. The PTABOA has, though, now proposed a way to allow you to inspect the requested files and indicate which, if any, you would like the Assessor to copy.

Regarding your request for a copy of the tax appeal policies and procedures, the PTABOA contends the request is vague and that the Assessor does not maintain any

records responsive to the request. Regarding your request for color copies of photographs in the 2006 appeal notebook, the Assessor has offered to allow you to check out the volume and make copies.

## ANALYSIS

The public policy of the APRA states, "(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." I.C. § 5-14-3-1. The PTABOA is clearly a public agency for the purposes of the APRA. I.C. § 5-14-3-2(m). Accordingly, any person has the right to inspect and copy the public records of the PTABOA during regular business hours unless the public records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. I.C. § 5-14-3-3(a).

A request for records may be oral or written. I.C. §§ 5-14-3-3(a), 5-14-3-9(c). If the request is delivered in person and the agency does not respond to the request within twenty-four hours of receipt, the request is deemed denied. I.C. § 5-14-3-9(a).

Here, the PTABOA received your request on June 12 and did not respond until July 7, the date my office received your complaint. Because the PTABOA did not respond within twenty-four hours of receiving the written request, the PTABOA violated the APRA by effectively denying you access to records without providing a statement as to the specific exemption allowing the agency to withhold access to the records. *See* I.C. § 5-14-3-9(a); I.C. § 5-14-3-9(c)(2).

Substantively, the PTABOA argues that producing the first set of records you have requested, the Form 130 pages and the pages from tax appeals which have had preliminary hearings, would be an onerous task the PTABOA lacks the staff to accomplish. While the APRA requires an agency to "regulate any material interference with the regular discharge of the functions or duties of the public agency," that section may not be used "to deny to any person the rights secured by section 3 of this chapter," namely to inspect and copy the public records of a public agency. *See* I.C. § 5-14-3-7. As such, it is my opinion that the APRA requires the PTABOA to make available for inspection and copying any records it maintains which are responsive to your request and not excepted from disclosure.

The PTABOA proposes allowing you to inspect the 2006 and 2007 files and identify which records, if any, you wish to have copied. The PTABOA proposes requiring you to sign a confidentiality agreement, wherein you will agree not to disclose confidential financial information pertaining to the records you inspect. The PTABOA argues that I.C. § 6-1.1-35-9 allows disclosure of confidential financial information during the course of a judicial proceeding in which the regularity of an assessment is questioned.

At least some of the information contained in the 2006 and 2007 appeals files is confidential pursuant to I.C. § 6-1.1-35-9(a). Pursuant to the APRA, records declared confidential by state statute may not be disclose absent a requirement for disclosure provided by state or federal statute or order of the court under the rules of discovery. *See* I.C. § 5-14-3-4(a)(1). As the PTABOA contends, I.C. § 6-1.1-35-9(d) does provide that confidential financial information may be disclosed in the specific instance of the course of a judicial proceeding in which the regularity of an assessment is questioned. If your request was made during the course of such a judicial proceeding, it is my opinion the PTABOA's proposed procedure for allowing you to inspect the totality of the 2006 and 2007 files is in compliance with the APRA.

Regarding your request for a copy of the tax appeal policies and procedures for the county, the PTABOA responds that it maintains no records responsive to the request. Nothing in the APRA requires a public agency to *develop* records or information pursuant to a request. The APRA requires the public agency to *provide access* to records already created. If the PTABOA does not maintain a record responsive to the request, it is not required to create such a record in order to respond to your request.

Regarding your request for copies of photographs, the PTABOA has offered to allow you to check out the volume from the office and make your own copies. This satisfies the APRA requirement that you be allowed to inspect the records of the agency. *See* I.C. § 5-14-3-3. If the agency has reasonable access to a machine capable of producing the records you have requested (here, color copies of photographs), the agency shall provide you the requested copies. I.C. § 5-14-3-8(e). The agency may charge you copy fees in compliance with I.C. § 5-14-3-8. If the agency does not have reasonable access to such a machine, allowing inspection and allowing you to make your own copies are actions that would satisfy the requirements of the APRA.

#### CONCLUSION

For the foregoing reasons, it is my opinion the PTABOA violated the APRA by failing to respond to your request within twenty-four hours but did not otherwise violate the APRA.

Best regards,



Heather Willis Neal  
Public Access Counselor

Cc: James Carmichael, Delaware County Assessor  
Beth Henkel