



# STATE OF INDIANA

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August 12, 2009

Michael Snelling  
715 Ash Street  
Huntington, Indiana 46750

*Re: Formal Complaint 09-FC-161; Alleged Violation of the Access to Public Records Act by the Huntington County Board of Commissioners*

Dear Mr. Snelling:

This advisory opinion is in response to your formal complaint alleging the Huntington County Board of Commissioners ("Commissioners") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by denying you access to records. The Commissioners' response to the complaint is enclosed for your reference. It is my opinion the Commissioners should provide access to the requested records in accordance with the electronic map provisions of the APRA.

## BACKGROUND

You allege that early in 2009 you requested from the Commissioners a copy of records related to an electronic map maintained by the Commissioners. Specifically, you requested, among other items, all geographic information system ("GIS") data layers and aerial photography maintained by the Commissioners. You received a letter dated April 28, 2009 from County Attorney Robert Garrett, who provided much of the information you requested. Regarding some of the information, Mr. Garrett quoted you a price to be charged by the Commissioners' contractor.

You received subsequent correspondence indicating the aerial photos would not be provided because they constitute copyrighted material. You sent an electronic mail message to Mr. Garrett on June 2, inquiring about the issue. You indicate that Mr. Garrett responded to you the next day, indicating he would investigate and respond to you. You allege this is the last you have heard from the Commissioners, even though you have contacted Mr. Garrett to inquire about the status. You filed the present complaint on July 20 (postmarked July 14).

The Commissioners responded to the complaint by letter dated July 22 from Mr. Garrett. The Commissioners contend the Pictometry imagery is licensed to Huntington County and only limited quantities can be provided to the public. Further, Mr. Garrett

contends the entire library cannot be disclosed. The Commissioners further contend that the APRA does not require records to be maintained in a particular manner. Finally, Mr. Garrett indicates he has provided you with many of the records you have requested and that your hard drive remains in his office and is available for you to retrieve at your convenience.

## 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 Board of Commissioners 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 Commissioners 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).

The issue here appears to be one related to an electronic map, as defined in the APRA at I.C. § 5-14-3-2(e), "copyrighted data provided by a public agency from an electronic geographic information system." The Commissioners contend that at least a portion of the system is licensed and as such the Commissioners cannot provide public access.

I have addressed the issue of GIS systems maintained by counties at length in an informal advisory opinion I issued on March 11, 2009. I have enclosed a copy for your reference. As you will note, it is my opinion that

I.C. § 4-23-7.3-20(a) provides that "a political subdivision maintains the right to control the sale, exchange, and distribution of any GIS data or framework data. . ." But it is important that within the same chapter is a provision indicating that language does not supersede the APRA. *See* I.C. § 4-23-7.3-22. And the APRA contains the provision which prohibits an agency from entering an agreement that would require a requester to pay royalties to inspect and copy a record. Based on the foregoing, it is my opinion that because the GIS mapping statute defers to the APRA, the GIS mapping statute is not a statute that would grant an agency a waiver of the I.C. § 5-14-3-3(g) requirements.

*Public Access Counselor Informal Advisory Opinion 09-INF-5.*

The I.C. § 5-14-3-3(g) requirements to which I refer are the following:

(g) A public agency may not enter into or renew a contract or an obligation:

(1) for the storage or copying of public records; or

(2) that requires the public to obtain a license or pay copyright royalties for obtaining the right to inspect and copy the records unless otherwise provided by applicable statute;

if the contract, obligation, license, or copyright unreasonably impairs the right of the public to inspect and copy the agency's public records.

*Id.*

I do not believe I have before me enough facts to conclusively determine whether the records at issue constitute an electronic map as defined in the APRA. It is my opinion they likely do constitute an electronic map. If that is true, the Commissioners must provide access to the records, pursuant to the APRA. The following fee provision of the APRA would apply:

I.C. § 5-14-3-8(j) provides the following:

Except as provided in subsection (k), a public agency may charge a fee, uniform to all purchasers, for providing an electronic map that is based upon a reasonable percentage of the agency's direct cost of maintaining, upgrading, and enhancing the electronic map and for the direct cost of supplying the electronic map in the form requested by the purchaser. If the public agency is within a political subdivision having a fiscal body, the fee is subject to the approval of the fiscal body of the political subdivision.

*Id.*

In my opinion, the records at issue likely constitute an electronic map, and as such access to those records must be provided in accordance with the electronic map provisions of the APRA. The Commissioners bear the burden of proof for nondisclosure, and it is my opinion the Commissioners have not discharged that burden to show why the records should not be disclosed. *See* I.C. § 5-14-3-1.

#### CONCLUSION

For the foregoing reasons, it is my opinion the Commissioners should provide access to the requested records in accordance with the electronic map provisions of the APRA.

Best regards,



Heather Willis Neal  
Public Access Counselor

Cc: Robert Garrett, Huntington County Attorney