

April 28, 2008

Chris Stidham  
2610 Portage Mall  
Portage, Indiana 46368

*Re: Formal Complaint 08-FC-90; Alleged Violation of the Access to Public Records Act by the City of Portage Clerk Treasurer's Office*

Dear Mr. Stidham:

This advisory opinion is in response to your formal complaint alleging the City of Portage Clerk Treasurer's Office ("Clerk") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by improperly redacting information from records you requested. I have enclosed a copy of the Clerk's response to the complaint for your reference. It is my opinion the Clerk has violated the Access to Public Records Act by redacting the assessed value information required by I.C. § 6-1.1-12.1-5.1(c)(5) to be disclosed. It is further my opinion the Clerk did not violate the response provisions of the APRA since her responses to the requests were timely under the statute.

#### BACKGROUND

In your complaint you allege that you submitted to the Clerk on March 24, 2008 a request for copies of CF-1 forms for the 2007 filing year. You received the copies on March 27. The information for "assessed value" was redacted, and you allege this is in violation of I.C. § 6-1.1-12.1-5.1(c). You verbally requested and were subsequently denied the assessed value information on March 27 and April 1. On April 1 you submitted a written request for the information. Receiving no response, you filed this complaint on April 9, alleging denial of access.

The Clerk responded by letter dated April 10. The Clerk contends she followed past advice from a former city attorney when she redacted the assessed value information from the forms. The Clerk contends that after hearing from your office on April 1 and receiving your renewed request, she contacted the current city attorney to request an opinion. The attorney indicated she should redact the cost information but should provide the assessed value information. The Clerk contends she was still concerned about what she could provide and as such contacted this office, to which we responded she should provided everything not excepted from disclosure by statute. The Clerk contends that on April 4 she sent you a faxed letter indicating she was awaiting advice from this office regarding the request and would be in touch after receiving a response.

The Clerk indicates that she telephoned you on April 9 to inform you that the records would be available on April 11.

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

If a record is confidential under state or federal statute, access to the record may not be provided for inspection or copying. I.C. § 5-14-3-4(a)(1) and (3).

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 by mail or facsimile and the agency does not respond to the request within seven days of receipt, the request is deemed denied. I.C. § 5-14-3-9(b).

A response could be an acknowledgement that the request has been received and information regarding how or when the agency intends to comply. There are no prescribed timeframes when the records must be produced by a public agency. A public agency is required to regulate any material interference with the regular discharge of the functions or duties of the public agency or public employees. I.C. § 5-14-3-7(a). However, section 7 does not operate to deny to any person the rights secured by section 3 of the Access to Public Records Act. I.C. § 5-14-3-7(c). This office has stated that records must be produced within a reasonable period of time, based on the facts and circumstances. Consideration of the nature of the requests (whether they are broad or narrow), how old the records are, and whether the records must be reviewed and edited to delete nondisclosable material are necessary to determine whether the agency has produced records within a reasonable timeframe.

Here, the Clerk received your request on March 24 and provided the records on March 27. You have not indicated whether the March 24 request was made orally or in writing. If the request were made in writing, the Clerk would be obligated to provide a statutory reason for denial of access of the redacted portion of the forms. I.C. § 5-14-3-9(c). The APRA does not contain a similar provision for requests made verbally.

Regarding the allegation that the Clerk did not respond to your April 1 request, the Clerk has provided a copy of a fax she sent to you on April 4. In the correspondence, the Clerk indicated she was contacting this office regarding the matter and would contact you again after receiving a response from this office. The Clerk's response on April 4 was well within the seven days allowed by I.C. § 5-14-3-9(b). The APRA does not require records to be produced within seven days. Instead, it requires the response to be sent within seven days. So long as the Clerk indeed sent the fax as she indicated, she did not violate section 9(b) of the APRA.

As to the information the Clerk redacted from the forms, I.C. § 6-1.1-12.1-5.1 addresses the disclosure of the information:

(c) Notwithstanding IC 5-14-3 and IC 6-1.1-35-9, the following information is a public record if filed under this section:

- (1) The name and address of the taxpayer.
  - (2) The location and description of the property for which the deduction was granted.
  - (3) Any information concerning the number of employees at the property for which the deduction was granted, including estimated totals that were provided as part of the statement of benefits.
  - (4) Any information concerning the total of the salaries paid to those employees, including estimated totals that were provided as part of the statement of benefits.
  - (5) Any information concerning the assessed value of the property, including estimates that were provided as part of the statement of benefits.
- (d) The following information is confidential if filed under this section:
- (1) Any information concerning the specific salaries paid to individual employees by the property owner.
  - (2) Any information concerning the cost of the property.

The information at issue here is the assessed value of the property, which is clearly a public record required to be disclosed, pursuant to I.C. § 6-1.1-12.1-5.1(c)(5). As such, the Clerk is required to provide that information upon request.

#### CONCLUSION

For the foregoing reasons, it is my opinion the Clerk has violated the Access to Public Records Act by redacting the assessed value information required by I.C. § 6-1.1-12.1-5.1(c)(5) to be disclosed. It is further my opinion the Clerk did not violate the response provision of the APRA since her responses to the requests were timely under the statute.

Best regards,



Heather Willis Neal  
Public Access Counselor

Cc: Donna Pappas, City of Portage Clerk Treasurer