



STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

PUBLIC ACCESS COUNSELOR
ANDREW J. KOSSACK

Indiana Government Center South
402 West Washington Street, Room W470
Indianapolis, Indiana 46204-2745
Telephone: (317)233-9435
Fax: (317)233-3091
1-800-228-6013
www.IN.gov/pac

June 27, 2011

Mr. Martin L. Hensley
15 Wood Street
Greenfield, IN 46140

Re: Formal Complaint 11-FC-152; Alleged Violation of the Access to Public Records Act and the Open Door Law by the Hancock County Assessor

Dear Mr. Hensley:

This advisory opinion is in response to your formal complaint alleging the Hancock County Assessor (the "Assessor") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.*, and the Open Door Law ("ODL"), Ind. Code § 5-14-3-1 *et seq.* The Assessor's response to your complaint is enclosed for your reference. I note that I have granted your request for priority status under 62 Ind. Admin. Code 1-1-3(3).

BACKGROUND

In your complaint, you allege that you have repeatedly requested access to the applications of various nonprofit exemptions and filings in Hancock County from the Assessor. You have also requested a meeting with the Assessor to determine how nonprofits properly apply for an exemption. You claim that "[d]espite repeated requests the Assessor refuses to meet privately which I believe is a violation of the open door law [sic]." You further claim that she denied you access to records on June 16th, but later contacted you and informed you that you could review the materials after certain portions were redacted.

Attorney Marilyn S. Meighen responded to your complaint on behalf of the Assessor. She states that the Assessor first received your records request on June 16th. The Assessor informed you that same day that the requested records would be reviewed for confidential information and the Assessor would contact you once that review was complete. The Assessor had to make copies of the requested records first in order to redact confidential information prior to disclosure. Specifically, Ind. Code § 6-1.1-35-9 provides that all information related to earnings, income, profits, losses, or expenditures is confidential. Moreover, Ind. Code §§ 6-1.1-5.5-5, 6-1.1-12-37 require that social

security numbers and telephone numbers be maintained as confidential. On June 20th, the Assessor notified you that 197 copies were available for you to pick up at a cost of \$.10 per page.

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 Assessor is a “public agency” under the APRA. 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 public records are excepted from disclosure as 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 by mail or facsimile and the agency does not respond to the request within seven (7) days of receipt, the request is deemed denied. I.C. §5-14-3-9(b). If the request is delivered in person and the agency does not respond within 24 hours, the request is deemed denied. I.C. §5-14-3-9(a). A “response” from the public agency could be simply an acknowledgement that the request has been received and information regarding how or when the agency intends to comply. Nothing in the APRA indicates that an agency’s failure to provide a requester with “instant access” to requested records constitutes a denial of access. *Opinion of the Public Access Counselor 09-FC-192*. “It is the responsibility of the public agency to *respond* to requests for access to public records within a specified time period. The APRA does not set any time periods for *producing* public records, merely for responding to the request.” *Opinion of the Public Access Counselor 02-FC-09* (O’Connor; advising that an agency’s failure to produce requested documents within five days was not a denial under the APRA) (emphasis added).

As to how long a public agency should take to actually release records responsive to a request, the public access counselor has stated repeatedly that records must be produced within a reasonable period of time, based on the facts and circumstances. Considering factors such as 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 is necessary to determine whether the agency has produced records within a reasonable timeframe. Section 7 of the APRA requires a public agency 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).

Here, Ms. Meighen states that the records were not provided to the same day that you first requested them from the Assessor because they needed to be reviewed to ensure that any and all confidential information was redacted prior to disclosure. The APRA *requires* public agencies to separate and/or redact confidential information in public records before making the disclosable information available for inspection and copying. I.C. § 5-14-3-6(a). Thus, the Assessor did not violate the APRA by delaying the

disclosure of the records so that she could redact confidential information therein. *See Opinion of the Public Access Counselor 10-FC-38*. Moreover, the fact that the Assessor copied and prepared 197 responsive records within three days of your request indicates that the Assessor produced the records within a reasonable period of time.

Finally, as to your allegation that the Assessor violated the ODL by refusing to meet with you, the ODL applies only to multi-member governing bodies of public agencies such as boards, commissions, councils, and authorities. For better or worse, the ODL does not grant individuals the right to meet with individual officials. Consequently, the Assessor did not violate the ODL by refusing to meet with you.

CONCLUSION

For the foregoing reasons, it is my opinion that the Assessor violated neither the APRA nor the ODL.

Best regards,

A handwritten signature in black ink that reads "Andrew J. Kossack". The signature is written in a cursive, slightly slanted style.

Andrew J. Kossack
Public Access Counselor

Cc: Marilyn S. Meighen