



STATE OF INDIANA

MICHAEL R. PENCE, Governor

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May 7, 2015

Ms. Deborah Bell
Black Knight Real Estate Data Solutions, LCC
600 N Brand Blvd., #500
Glendale, CA 92103

Re: Formal Complaint 15-FC-112; Alleged Violation of the Access to Public Records Act by the Bartholomew County Recorder

Dear Ms. Bell,

This advisory opinion is in response to your formal complaint alleging the Bartholomew County Recorder ("Recorder") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et. seq.* The Recorder responded to your complaint via counsel, Mr. J. Grant Tucker, Esq. His response is enclosed 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 on March 26, 2015.

BACKGROUND

Your complaint dated March 17, 2015 alleges the Bartholomew County Recorder violated the Access to Public Records Act by failing to provide the requested documentation within a reasonable amount of time.

On February 13, 2015, you made an APRA request to the Recorder, seeking an electronic copy of the Official Recorded Property for Bartholomew County, including all deeds recorded from January 2009 to the time of requesting. You previously made other requests for the same information. However, since those requests fall outside the thirty (30) day statute of limitations, the PAC will not opine on those requests.

On April 10, 2015, counsel responded to your complaint. Counsel notes that in response to a February 21, 2014 letter, Black Knight Financial Services was informed of the Recorder's policies for disclosure. Black Knight Real Estate Data Solutions has not claimed to have made a February 21, 2014 request.

ANALYSIS

The public policy of the APRA states that “(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.” See Ind. Code § 5-14-3-1. The Bartholomew County Record is a public agency for the purposes of the APRA. See Ind. Code § 5-14-3-2(n)(1). Accordingly, any person has the right to inspect and copy the Recorder’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).

A request for records may be oral or written. See Ind. Code § 5-14-3-3(a); § 5-14-3-9(c). If the request is delivered in person and the agency does not respond within 24 hours, the request is deemed denied. See Ind. Code § 5-14-3-9(a). 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. See Ind. Code § 5-14-3-9(b). A response from the public agency could be an acknowledgement the request has been received and information regarding how or when the agency intends to comply.

As noted in *Advisory Opinion 15-FC-111*, a public agency must produce documents responsive to a request within a reasonable time. Although reasonable time is not defined in the APRA or by the Courts, it is a common sense standard which differs on a case-by-case basis. You requested the records in May 2014 and you have not received any records since that time. The reasonable time for production of records has clearly elapsed.

Therefore because your request was considered to be “denied” in 2014, this Office cannot opine on any of Black Knight’s complaints because they fall outside the thirty (30) day statute of limitations. “A person or public agency which chooses to file a formal complaint with the counselor must file the complaint not later than thirty (30) days after the denial.” See Ind. Code § 5-14-5-7(a)(1). Because you failed to file a complaint for your previous denials within the thirty (30) day time period of your original request (May, 2014), this Office cannot issue a conclusion as to a violation. This includes renewed requests for identical information.

Provided you or your organization does not intend to resell the bulk form records for commercial purposes, you would be entitled to the records in the manner the recorder maintains them – including electronically. See generally, Ind. Code § 36-2-7-10.1.

Additionally, the APRA does not discriminate against out-of-state public access requesters (“all persons are entitled to full and complete information regarding the affairs of government”). It is not reasonable to expect an out-of-state requester to travel to Indiana to inspect records if they can be easily transmitted electronically. Ind. Code § 36-2-7-10.1 contemplates this in section (i):

The county recorder shall provide bulk users with bulk form copies in the format or medium in which the county recorder maintains the recorded

documents and indices. If the county recorder maintains the recorded documents and indices in more than one (1) format or medium, the bulk user may select the format or medium in which the bulk user shall receive the bulk form copies. If the county recorder maintains the recorded documents and indices for finding, retrieving, and viewing the recorded documents in an electronic or a digitized format, a reasonable effort shall be made to provide the bulk user with bulk form copies in a standard, generally acceptable, readable format.

Pursuant to this statute, it is not sufficient to invite a requester to inspect a record on-site if the Recorder maintains the information electronically. The Recorder should also take note of the bulk user fee schedule in subsection (g) which is \$.07 a page versus the normal \$1.00 per page under the County Recorder's Fee schedule found at Ind. Code § 36-2-7-10.

Regards,

A handwritten signature in black ink, appearing to read 'L. H. Britt', with a large, sweeping flourish underneath.

Luke H. Britt
Public Access Counselor

Cc: Mr. J. Grant Tucker, Esq.