



# STATE OF INDIANA

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February 27, 2015

Tom J. Terry  
3804 W. Allen Ct.  
Muncie, IN 47304

*Re: Formal Complaint 15-FC-25 & 27 (Consolidated); Alleged Violation of the Access to Public Records Act by the Delaware County Assessor and the Delaware County Property Tax Board of Appeals*

Dear Mr. Terry,

This advisory opinion is in response to your formal complaint(s) alleging the Delaware County Assessor ("Assessor") and the Delaware County PTABOA ("PTABOA") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et. seq.* The PTABOA has responded to your complaint(s) via Counsel, Steven D. Murphy, Esq. His response is enclosed. Pursuant to Ind. Code § 5-14-5-10, I issue the following opinion to your formal complaint(s) received by the Office of the Public Access Counselor on January 26, 2015.

## BACKGROUND

Your complaint dated January 26, 2015 alleges the Delaware County Assessor and Property Tax Board of Appeals violated the Access to Public Records Act by failing to provide the requested information.

On or about December 5, 2014, you submitted a public records request to the PTABOA. You requested the minutes relating to PTABOA deliberations on specific parcels. On January 5, 2015, the PTABOA requested specification on the records requested. You clarified on January 14, 2015 the request was regarding meetings where the PTABOA "decides the correct assessment of a property. On January 16, 2015, the secretary for the PTABOA informed you that "preliminary meetings are not recorded" and "notes were not retained."

On February 11, 2015, the PTABOA responded to your formal complaint. The PTABOA notes no minutes exist for the meetings. An affidavit to that effect is sworn by Mr. James Carmichael, Secretary of the Board. The PTABOA also notes while the meetings are



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recorded, the information discussed includes confidential financial information. He maintains the Delaware County Assessor is working to determine a method to make the recordings of your meeting available to you.

On February 17, 2015, you sent a message to this Office supplementing your complaint. You maintain information discussed at PTABOA meetings cannot be considered confidential because other counties have open meetings. Further, you contend a failure to maintain minutes would be a violation of Ind. Code § 6-1.1-28-1.

Your subsequent complaint contends the PTABOA did not properly provide you with copies of the "134 forms". The PTABOA contends you have previously received the requested 134 forms. The Board notes these forms bear your signature, which he contends is proof of your receipt.

## 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 Delaware County Assessor and the Delaware County PTABOA are public agencies 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 DCA's and BOA'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).

County property tax boards of appeals are appointed by the county commissioners pursuant to Ind. Code § 6-1.1-28-1. As such, they are governing bodies subject to the Open Door Law. See Ind. Code § 5-14-1.5 et. al. Meetings of governing bodies are to be open in order that the public may observe and record. By their nature PTABOAs often receive financial information from appellants. Because there are confidentiality limitations as to what can be disclosed by a public agency when it comes to financial information, a logistical challenge is created when the PTABOA holds their hearings.

If an open meeting is recorded, it should be made available for inspection and copying. The PTABOAs response argues the recording may have confidential financial information to be separated before the entirety of the recording is released to you upon



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request. However, please consider a recent opinion issued by this office in *Opinion of the Public Access Counselor 15-FC-28*:

By itself, a recording of an open meeting should not be subject to redactions. When a properly noticed meeting attended by the public is conducted, anyone has the opportunity to observe and record. See generally, Ind. Code § 5-14-1.5 et. al. Therefore, if confidential subject matter is discussed, it has already been disclosed and loses its confidential or discretionary status.

However, complicating this matter is the provision in Ind. Code § 6-1.1-35-10 which states an assessing official is to be dismissed if confidential information is released. Presumably, the confidential financial information has been disclosed already by the petitioner or appellant, however, in the open meeting and is consent for release.

Alternatively, I regularly counsel PTABOAs to instruct appellants to file confidential information with the Board on paper and not reference it during an oral argument. If that process is followed, the recording is clean as to any sensitive information. The PTABOA may then recess into a properly noticed executive session to discuss the information, if necessary, but not to deliberate or come to a final decision. After the information is discussed, they should re-open the public hearing and come to a vote. This is admittedly inconvenient; however, I am not aware of any other authority in the law which addresses the unique circumstances facing PTABOA open hearings.

Furthermore, according to the Open Door Law, minutes and/or memoranda are to be taken of all open meetings. The PTABOA alleges the meetings do not exist, however, they are required under Ind. Code § 5-14-1.5-4. You have not alleged an Open Door Law Violation; however, if you had done so, the Board would have been in violation for not keeping proper minutes.

As for the issue with the 134 forms, there is no question you are entitled to these documents upon request. Pursuant to a request, the PTABOA would have a reasonable amount of time to produce those records. The circumstances described in the information provided indicate this is a matter of fact and not a matter of law. This Office does not weigh and adjudicate facts and credibility, so I have no way to determine if the forms were sent or not. It is my sincere hope you are able to obtain them expeditiously in the future, if you have not already done so.



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## CONCLUSION

For the foregoing reasons, it is the Opinion of the Public Access Counselor the Delaware County Assessor and Property Tax Board of Appeals should release the recording of the minutes and the 134 forms as soon as possible.

Regards,

A handwritten signature in black ink, appearing to read "L. H. Britt".

Luke H. Britt  
Public Access Counselor

Cc: Mr. Steven Murphy, Esq.