

November 4, 2004

Sent Via Facsimile

Mr. Kevin M. Fasick
SAVVY Property Tax Services
8720 Yardley Court, Suite 108
Indianapolis, IN 46268

Re: Formal Complaint 04-FC-185; Alleged Violation of the Access to Public Records Act by the Washington Township Assessor

Dear Mr. Fasick:

This is in response to your formal complaint alleging that the Washington Township Assessor (“Assessor”) violated the Access to Public Records Act by failing to timely produce records. I find that the Washington Township Assessor did not violate the Access to Public Records Act.

BACKGROUND

According to your complaint, you requested copies of “notices of assessment” sent to homeowners of Beaumont on the Green. You do not specify when your request was made to the Washington Township Assessor. You allege that Valuations Deputy Ben Buckles initially denied your request, but then relented, copying records dated August 4, 2004. Again, you do not state whether your request was for a particular month’s records. In any case, you discovered that the copies you received did not contain any copies of notices for September 2, 2004. You then sent an e-mail request to the Assessor on October 1, 2004, requesting the September notices. You allege that there was no response to your October 1 request, in which you told the Assessor of your intention to visit the Assessor’s office on October 4, presumably to pick up the records.

When you arrived at the Assessor’s office on October 4, you allege that Mr. Buckles refused to make the copies at that time, even though you told him that your request was time-sensitive. Your complaint to the Office of the Public Access Counselor followed, which I received on October 6, 2004.

I sent a copy of your complaint to the Assessor. In response, the Assessor Joline Ohmart stated that the notices of assessment, or Form 11's, were provided for the time period for which they had been completed, with the September 2 notices still being processed when your request was received. The Assessor included copies of your e-mail correspondence indicating that you acknowledged that the September 2 Form 11's were not available at the time you were in the Assessor's office, and also clarifying in another message that you had meant to request Form 11's, not Form 113's. Your Friday, October 1 message was sent at 4:15 p.m. When you came to the Assessor's office on Monday, October 4, you were told that the Form 11's for September would be provided, but they could not be provided immediately. Rather, the Assessor alleges that Mr. Buckles told you that he would provide them as soon as possible. Further, due to staff shortages on that day (only two of six employees were at work), it was impossible to copy the Form 11's for you, and she could not allow you to inspect the files containing the Form 11's so that you could copy them yourself because the files also contain confidential information. The response of the Assessor is enclosed for your review.

ANALYSIS

Any person may inspect and copy the public records of a public agency during the regular business hours of the agency. Ind.Code 5-14-3-3(a). A request for records must identify the record requested with reasonable particularity. IC 5-14-3-3(a).

An agency must respond to a request for records in a timely manner, according to the requirements at IC 5-14-3-9(a). If a request is presented in person or by telephone, the agency must respond within 24 business hours. For requests that are mailed or sent by facsimile, the agency must respond within seven (7) calendar days. In addition, the Office of Public Access Counselor has interpreted the law to require the agency to respond to requests sent by electronic mail within 7 days, similar to mailed and faxed requests. If the request for records is written, the agency's denial, if any, must be in writing. IC 5-14-3-9(c). The agency's response does not have to include contemporaneous production of the record; rather, the agency must acknowledge receipt of the request and state the agency's intention with respect to whether it will allow inspection and copying, and an estimate of when the records will be produced.

The only delay in response time that you allege in your complaint is to the Oct. 1 e-mail request that was sent at 4:15 p.m. The Assessor responded to this request when you appeared in its office on Monday, October 4, and that response was timely because it was within 7 days of receipt of your request. Moreover, from the circumstances it appears that the Assessor did not deny the record; therefore, its response granting you the records did not have to be in writing.

It appears you are also alleging that the agency unreasonably delayed fulfilling your request. There are no explicit time requirements in the Access to Public Records Act for production of records. This Office will determine whether the agency's production of the records was within a reasonable period of time under the facts and circumstances. You were actually provided with the records you requested on October 8, four days after your appearance in the office, and four business days after the agency received your October 1 request. Although your need for the records may have been urgent, it was not incumbent on the Assessor to fulfill

your request for records immediately upon receipt of the request. You do not state how many records were required to be copied to fulfill your request, but on the facts presented here, I do not believe that the Assessor's production of the records you requested was unreasonable, given the staff shortage on Monday, October 4.

CONCLUSION

For the foregoing reasons, I find that the Washington Township Assessor's Office did not violate the Access to Public Records Act.

Sincerely,

Karen Davis
Public Access Counselor

cc: Joline Ohmart