

February 18, 2008

Paul Myers  
405 Prospect Street  
East Chicago, Indiana 46312

*Re: Formal Complaint 08-FC-55; Alleged Violation of the Access to Public Records Act by the Calumet Township (Lake County) Assessor*

Dear Mr. Myers:

This advisory opinion is in response to your formal complaint alleging the Calumet Township Assessor ("Assessor") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by denying you access to records. I have enclosed a copy of the Assessor's response to the complaint for your reference. It is my opinion the Assessor has not violated the APRA unless the records you have requested are not available via the website.

#### BACKGROUND

You allege that you telephoned the Assessor on or before February 14, 2008 to request copies of records maintained by the Assessor. You allege the Assessor indicated the records were available via the Assessor's website and the website of the Indiana Department of Local Government Finance. You allege the Assessor later telephoned you and indicated you could obtain a CD containing a copy of the information for a fee of \$250. Alleging denial of access, you filed this complaint on February 14. You alleged priority status under 62 IAC 1-1-3, claiming you require the information for an appeal deadline of February 25. Priority status has been granted.

The Assessor responded to your complaint by a brief letter dated February 14 from Jacquelyn Collins, Chief Deputy to the Assessor. Ms. Collins contends the Assessor has never denied you access to information. Ms. Collins indicates the information you request has been available for the past six months.

#### 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." Ind. Code § 5-14-3-1. The Assessor 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 Assessor during regular business hours unless the public records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. I.C. § 5-14-3-3(a).

Except as provided in subsection (e), a public agency that maintains or contracts for the maintenance of public records in an electronic data storage system shall make reasonable efforts to provide to a person making a request a copy of all disclosable data contained in the records on paper, disk, tape, drum, or any other method of electronic retrieval if the medium requested is compatible with the agency's data storage system. I.C. § 5-14-3-3(d).

I understand your complaint to be that the Assessor's provision of the information you request via the website is not sufficient. This office has addressed the issue of information available via an agency website in the APRA context in *Opinion of the Public Access Counselor 07-FC-70*. There, Counselor Davis opined that the public agency had made reasonable efforts to provide copies of records by posting them on the agency website. It is my opinion the same issue is present here, and if I correctly understand your complaint to be that you would prefer the Assessor provide you with a copy of the records than retrieving the record from the website, it is my opinion the Assessor has made reasonable efforts to provide you with a copy of the record by posting the record on the agency website.

If the information you request is indeed not available via the agency website, it is my opinion the Assessor has a duty under I.C. § 5-14-3-3(d) to make reasonable efforts to provide you a copy of the record in the medium requested.

To the extent your complaint is intended to address the fee the Assessor has indicated he will charge for a CD containing the record, the Assessor may charge a fee, uniform to all purchasers, for providing a duplicate of a computer tape or disc that does not exceed the sum of the following:

1. The agency's direct cost of supplying the information in that form.
2. The standard cost for selling the same information to the public in the form of a publication if the agency has published the information and made the publication available for sale.

I.C. § 5-14-3-8(g).

Direct cost means 105% of the sum of the cost of

1. The initial development of a program, if any;
2. The labor required to retrieve the electronically stored data; and
3. Any medium used for electronic output.

I.C. § 5-14-3-2(c).

The Assessor must be able to show that the fee is in line with those provided in the APRA for providing a copy of the record in the medium you requested.

## CONCLUSION

For the foregoing reasons, it is my opinion the Assessor has not violated the APRA unless the records you have requested are not available via the website. If those records are not available via the website, the Assessor must either provide you with copies of the records or provide the statutory authority excepting the records from disclosure.

Best regards,



Heather Willis Neal  
Public Access Counselor

cc: Booker Blumenberg, Jr., Calumet Township Assessor