

July 22, 2005

Ronald L. Barnhart
520 West Beardsley Ave.
Elkhart, IN 46514

Re: Formal Complaint 05-FC-122; Alleged Violation of the Access to Public Records Act by the Elkhart County Assessor

Dear Mr. Barnhart:

This is in response to your formal complaint alleging that the Elkhart County Assessor ("Assessor") violated the Access to Public Records Act ("APRA") by failing to provide you with public records that you have requested.

BACKGROUND

On June 22, 2005 you filed a formal complaint with the Office of the Public Access Counselor. Your complaint was assigned formal complaint # 05-FC-122. In your complaint you alleged that the Assessor had violated the APRA in its response to a request for records that you submitted on May 31, 2005. The Assessor responded to your records request by letter dated June 6, 2005. Your complaint raised two basic issues.

First, you have alleged that the Assessor's response, that you could review the requested "Sales Disclosure Statements", "Vacant Sale Price", and "Improved Sale Price" information at the Elkhart County Microfilm Department was inappropriate. You stated that the Assessor receives a copy of every sales disclosure report from the County Auditor and by law is required to retain them. You state that the reports are, therefore, either physically in his office or are in a database accessible using his computers. You stated that your request was directed to him and that by law he has the duty to provide the requested documents and not some other agency. The Assessor also stated that the Real Property Assessment Guidelines are available at your local public library for your perusal.

Second, you alleged that the Assessor's response failed to comply with your request for information concerning the numbering system for certain parcels of land. You requested that the Assessor provide you with "[A] means of converting the old to the current parcel numbers." The

Assessor responded by stating that you would need to be more specific in your request. Additionally, he stated that, “[a]ll of the numbers have been changed because of the statute, since that time, various parcel numbers have been changed because parcels were combined and other parcel numbers have been changed because a split was done.”

Additionally, you requested, “Any and all data, information, manuals etc. related to, supporting and explaining the derivation of the Adjusted Values including references to copies of all legal authority for such adjustments.” He suggested that you be more specific as to which item of information you needed and to “not generalize as you have done in your letter.” He also referred you to the Department of Local Government Finance website, presumably as another source for the information that you seek. You believe that your request does identify with reasonable particularity the documents that you seek. Additionally, you stated that, “[the Assessor] understands exactly what is required to support and justify the derivation of these figures and has access to and control over all of the supporting documents and is attempting to circumvent my request by claiming it is too general.

A copy of your complaint was forwarded to the Assessor. Mr. Eugene Inbody, Elkhart County Assessor, responded by letter dated July 1, 2005. A copy of that letter is enclosed for your reference.

In response to your complaint that you were directed to the Microfilm department for reviewing the records Mr. Inbody stated, “[a]ll of the original sales disclosures for the entire county are also scanned to the Elkhart County Microfilm department and are available for viewing and or copying at anyone’s leisure during normal business hours.” He also pointed out that this location is closer to your home than his office is. He additionally stated, “[n]o one was attempting to withhold information or deny access to same.”

Mr. Inbody also stated that your request for “any and all data” was not denied. He said that he had simply requested that you be more specific about what you wanted. From Mr. Inbody’s letter it appears that the request would return a large quantity of documents as requested and that he was hoping that it could be narrowed down. He indicated that he provided you with suggestions as to other possible sources of the information.

ANALYSIS

Availability of Documents at Other Locations.

In his May 31, 2005 response to you the Assessor stated that the list of sales disclosure is available at the Elkhart County Microfilm Department for your perusal. He also indicated that you may look at the data and take notes as you wish, or request copies of the same for a per page copy fee. He also indicated that the Real Property Assessment Guidelines (“Guidelines”) are available at the local library for your perusal. He did not indicate, for either requested item, whether the information was available in his office.

Regarding the response that the information was available in the Microfilm Department, it is unclear whether he was telling you that you must make the request to a different agency, or

whether he has made arrangements at another, more convenient, government location for you to obtain those documents. An agency may not deny a request for a document that the agency maintains merely on the basis that another agency, or department, also maintains the same document. However, the agency may make arrangements for you to view the records at another location where the documents may be more easily accessible. If the Assessor was telling you that you must make a renewed request to a different agency, then he was in violation of the APRA. However, if he has made arrangements with the Microfilm Department to allow you to view the requested records at that facility, then it is not a violation of the APRA to inform you that the documents are available at that location for your review at any time, without need for a renewed request.

In response to your request for the Guidelines the Assessor told you that they are available at the library. Mr. Inbody made no indication that he did not have a copy of the Guidelines that you could inspect at his office; he simply told you that it was available at the library. In this situation, where the agency has not stated that it does not maintain the requested record it cannot require you to make your request to another agency merely because that agency also maintains the record. This differs from the situation above where an agency may arrange for the inspection of its records another more conveniently equipped location. The Assessor may arrange for you to view the documents at a more convenient facility, where the County has made arrangements for reviewing and copying public documents. However, the Assessor may not just refer you to other publicly available sources of the information without any indication that the agency does not maintain the document itself.

Finally, nothing in this opinion is intended to discourage agencies from offering helpful advice on other, perhaps more convenient, sources of information to requestors. However, the agency must either specifically state that it does not maintain the record or be clear that the suggestion is not intended as a denial of the request and that the requestor has the option to obtain the information from either agency.

Reasonable Particularity

When any person makes a request for records from a public agency, he must “identify with reasonable particularity the record being requested.” IC 5-14-3-3(a). While the phrase “reasonable particularity” appears to be clear, were it necessary to interpret the APRA to determine what the General Assembly intended this phrase to mean, courts would rely upon the common and ordinary meaning. *Crowley v. Crowley*, 588 N.E.2d 576, 578 (Ind. App. 1992). “Particularity” is defined as “the state of being particular rather than general.” THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE, 1981, 956. Statutory interpretation also requires that one construe the phrase “reasonable particularity” in light of the entire APRA. *Deaton v. City of Greenwood*, 582 N.E.2d 882, 885 (Ind. App. 1991). Since the APRA favors disclosure and the burden of proof for nondisclosure is on the public agency, the agency should contact the requestor for more information if it is necessary to respond to a request. However, when an agency requests more specificity from the requestor, the agency should provide explanation as to why the original request did not provide enough clarity to identify the requested documents.

The APRA requires the requestor to identify the records with reasonable particularity; it does not require the requestor to specifically identify by exact title the documents sought. The reason for this is obvious -- agencies are in a better position to know the documents within their possession than a member of the public is. If the requestor can do a credible job of describing the document, the agency may not turn him away based merely on form. See *Consolidated Opinion of the Public Access Counselor*, 05-FC-105 and 05-FC-111.

In this case, the Assessor asked you to be more specific regarding two portions of your request. First he was concerned with your request for “ A means of converting the old to the current parcel numbers.” Second, he felt that your request for: “Any and all data, information, manuals etc. related to, supporting and explaining the derivation of the Adjusted Values including references to copies of all legal authority for such adjustments” was not specific as well.

While an agency should request clarification if it is not certain as to what records would be responsive to the request it may not merely state that the request is not specific enough. The agency is in the unique position to know how records are maintained and indexed. Therefore, the agency should offer to the requestor a suggestion of what further information would be helpful in fulfilling the request, or more explanation as to why the agency does not understand the request. For example, the Assessor could have provided to you any document within his possession that showed a direct conversion from the old parcel numbers to the new ones. If he does not have such a document he should inform you of such. He could then inform you of what other documents he does maintain that could be responsive to your request and inquire whether they would meet your needs. Or he could request clarification regarding the word “means” in your request. Perhaps you intended to ask if there was a formula or specific method. The Assessor should have indicated to you where the confusion lies.

Additionally, an agency may not claim that a request is not reasonably particular merely because the request would return a large quantity of documents or information. If many documents could possibly be responsive the Assessor should notify you as to those documents that may be responsive and ask you whether you wish to inspect all of them, or whether there is some way you might like to narrow the field once you have seen what is available. However, the Assessor is also not required to do research to determine which documents may be responsive, if he does not know which are responsive he may provide you with the opportunity to inspect the documents for yourself, so long as he gives you some general guidance on where those documents could be within his records.

I will note that the Assessor has stated that his staff does not have the time to copy all of the requested documents. While the APRA states that an agency may regulate material interference with the regular discharge of the functions and duties of the office, IC 5-14-3-7(a), providing persons with information is an essential function of a representative government and an integral part of the routine duties of public official and employees. IC 5-14-3-1. The Assessor may not deny a request or require a requestor to narrow down the number of documents he would like to inspect merely because the office does not have time to fulfill the request. I will remind the Assessor, however, that he does not have to copy all of the documents but can provide you with the opportunity to inspect the documents and determine which you would like

to obtain copies of. He may then make the copies or allow you to make the copies on his equipment or your own.

Regarding your request for copies of all legal authority for the adjustments, if the Assessor has a document listing all legal authority then he may provide it to you. He is not required to do legal research, however.

While it may have been appropriate for the Assessor to request further clarification of your request, the Assessor should have provided you with more guidance on what information would be helpful in particularizing your request.

CONCLUSION

For the foregoing reasons, I find that the Elkhart County Assessor violated the Access to Public Records Act when it required you to obtain the requested records from the library without informing you as to whether it maintained the documents. Additionally, the Elkhart County Assessor should have provided you with more explanation when it requested that you clarify your request for records.

Sincerely,

Karen Davis
Public Access Counselor

cc: R. Eugene Inbody