

June 11, 2007

Brad Bohrer  
Senior Counsel  
First American Real Estate Solutions  
4 First American Way  
Santa Ana, CA 92707

*Re: Formal Complaint 07-FC-130; Alleged Violation of the Access to Public Records Act by the Vermillion County Auditor*

Dear Mr. Bohrer:

This is in response to your formal complaint alleging that the Vermillion County Auditor (“Auditor”) violated the Access to Public Records Act by charging an excessive copy fee for an electronic copy of records. I find that the Auditor may charge only the fee permitted under IC 5-14-3-8(g).

#### BACKGROUND

You filed a formal complaint after you received a quotation from the Auditor for an electronic copy of Vermillion County’s most recent tax roll. The cost of the copy of the data, maintained for the Auditor by a vendor named Manatron, would include three components. The proposed charge was comprised of: 1) \$.10 per parcel, 2) the fee charged by Manatron to perform the duplication, and 3) an undefined percentage of the annual fee charged by Manatron to maintain the county’s property record system. You stated that after talking with the county’s attorney, you believed that the county would be submitting a revised cost estimate. However, as of the filing of your complaint within 30 days of the first cost estimate, you have not received a revised estimate. Therefore, you submitted your formal complaint in the event that the Auditor’s original cost assessment would not be revised to reflect the correct amount.

I sent a copy of your complaint to the Auditor. I have not received any response from the Auditor or the county attorney. In addition, I have not been able to confirm by telephone to you whether the Auditor had changed her cost estimate.

## ANALYSIS

A public agency may charge the direct cost for providing a duplicate of a computer tape, computer disc, microfilm, or similar or analogous record system containing information owned by the public agency or entrusted to it. IC 5-14-3-8(g). Direct cost is defined as:

(c) "Direct cost" means one hundred five percent (105%) of the sum of the cost of:

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

for providing a duplicate of electronically stored data onto a disk, tape, drum, or other medium of electronic data retrieval under section 8(g) of this chapter, or for reprogramming a computer system under section 6(c) of this chapter.

IC 5-14-3-2(c).

The Auditor's estimate of the cost for the copy of electronically stored data contains an element that is not provided for in the Access to Public Records Act. The Auditor may not charge you a fee that represents a percentage of the annual fee charged by Manatron to maintain the county's property record system. A fee for the maintenance of a record system is provided for with respect to an electronic map, which includes a fee based upon a reasonable percentage of the agency's direct cost of maintaining, upgrading, and enhancing the electronic map. IC 5-14-3-9(j). An electronic map is information from an electronic geographic information system. IC 5-14-3-2(d). Nothing in the information you sent me shows that the tax roll information in the property record system is an electronic map; therefore, IC 5-14-3-8(j) does not apply. The Auditor may not charge a fee that includes a fee for Manatron to maintain the county's property record system. In addition, the fee must be consistent with the definition of "direct cost" in IC 5-14-3-2(c).

Sincerely,

Karen Davis  
Public Access Counselor

cc: Sherrie Koma