

June 13, 2007

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

*Re: Formal Complaint 07-FC-131; Alleged Violation of the Access to Public Records Act by the Warren County Auditor*

Dear Mr. Bohrer:

This is in response to your formal complaint alleging that the Warren County Auditor (“County”) violated the Access to Public Records Act by failing to provide copies of data in an electronic data storage system. I find that the Auditor is required to make reasonable efforts to provide the data on paper.

#### BACKGROUND

Ms. Christy Hogue of First American Real Estate Solutions (“First American”) requested the most recent tax assessment information filed with the Auditor. Mr. Steve Eberly, a county commissioner, advised Ms. Hogue that an electronic copy would be subject to the commercial use restrictions contained within a county ordinance. In response, Ms. Hogue submitted a revised request on April 6, 2007 for a paper copy of the current tax assessment and identified specific categories of information she anticipated would be included in the printed copy. Thereafter, Mr. Eberly denied Ms. Hogue’s revised request, stating that “The county doesn’t provide copies of information such as you have requested. Should you desire to review the records, please contact our assessor. You are welcome to view our property records during courthouse business hours.”

I sent a copy of your complaint to the County. Nancy Litzenberger, county attorney for Warren County submitted the enclosed response. She stated that there are computers available for public access in the recorder’s office and the treasurer’s office. There are no computers for accessing property data available to the public in the Auditor’s office. Ms. Litzenberger set forth the cost for copying paper records. You would be able to access the property information

you seek in the Treasurer's office computer, but you may only duplicate it subject to the Warren County ordinance 2007-1.

## ANALYSIS

Any person may inspect and copy the public records of any public agency, except as provided in section 4 of the Access to Public Records Act. Ind. Code 5-14-3-3(a). Except as provided in subsection 3(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. IC 5-14-3-3(d). Subsection 3(e) states:

A state agency may adopt a rule under IC 4-22-2, and a political subdivision may enact an ordinance, prescribing the conditions under which a person who receives information on disk or tape under subsection (d) may or may not use the information for commercial purposes, including to sell, advertise, or solicit the purchase of merchandise, goods, or services, or sell, loan, give away, or otherwise deliver the information obtained by the request to any other person for these purposes. Use of information received under subsection (d) in connection with the preparation or publication of news, for nonprofit activities, or for academic research is not prohibited. A person who uses information in a manner contrary to a rule or ordinance adopted under this subsection may be prohibited by the state agency or political subdivision from obtaining a copy or any further data under subsection (d).

I have not seen the Warren county ordinance, but I assume for purposes of this opinion that the ordinance prescribes the conditions under which a person who receives a copy of the information may or may not use the information for commercial purposes. The news of this ordinance prompted First American to submit a revised request for information from the data storage system, specifying that it be copied onto paper, instead of a disk.

It is not clear that viewing the information on properties in Warren County in the Treasurer's office will satisfy your request for data. The County has indicated that public copying of the records in large quantities is difficult but doable. The County has not said that the Auditor is unable to provide a copy of all disclosable data on paper, which is the medium that you have requested for the data. Rather, I take the County's response to be that the ordinance would apply to any mode for supplying the information from the Auditor's electronic data storage system.

The provision of subsection 3(e) for limiting by ordinance the use of data for commercial purposes applies only to data provided on disk or tape, by its terms. It does not apply to a copy of data received by a person on paper. Yet, subsection 3(d) provides that a public agency shall make reasonable efforts to provide a copy of data on paper as well as on disk or tape.

Therefore, it is my opinion that the Auditor must make reasonable efforts to provide to First American a copy of all disclosable data on paper.

## CONCLUSION

For the foregoing reasons, I find that the Warren County Auditor is required to make reasonable efforts to provide a copy of all disclosable data contained in the electronic data storage system on paper. I further find that the County does not have authority to limit the use of the information for commercial purposes, because the Access to Public Records Act allows such discretion by ordinance only with respect to a person who receives the information on disk or tape.

Sincerely,

Karen Davis  
Public Access Counselor

cc: Nancy Litzenberger