

August 17, 2007

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

Re: Formal Complaint 07-FC-213; Alleged Violation of the Access to Public Records Act by the Switzerland County Assessor

Dear Mr. Bohrer:

This is in response to your formal complaint alleging the Switzerland County Assessor (“Assessor”) violated the Access to Public Records Act (“APRA”) (Ind. Code §5-14-3) by denying your request for an electronic copy of the most recent tax/assessment roll. I find that absent an enacted ordinance restricting the use of the information for commercial purposes, the Switzerland County Assessor is required by the APRA to provide an electronic copy of the requested records and may charge you a fee not to exceed the direct cost of providing the records in the electronic format you request. If there is an ordinance restricting the use of the information for commercial purposes, I find that the Assessor is required to provide you with copies of the requested records.

BACKGROUND

You allege you first requested an electronic copy of the most recent tax/assessment roll from the Assessor on July 14, 2006. On September 26, 2006, the Assessor denied your request, indicating the County did not want the data used for commercial purposes. You submitted a new request to the Assessor on February 9, 2007 for paper copies of the data. Receiving no response, you renewed the written request on July 9. On July 10 the County attorney sent you a response denying the request for the following reasons: the County does not believe the APRA requires an official to copy the records and mail them to your office; the County does not believe the prepaid FedEx Return Airbill is the appropriate mechanism to return the documents, and the County does not have sufficient staffing to process the request.

You submitted your complaint to this office on July 18, 2007. The County attorney responded to your complaint on July 24. In its response, the County asserts it did not deny

access to records but merely denied copying the records and offered to allow you to personally inspect and copy the records. The County further asserts it does not have the ability to provide the data electronically. The County attorney indicates the information can be obtained from the County's vendor, Manatron, for a fee of about \$300. The County also submits that some of the information requested is available on the Assessor's website. Finally, the County asserts that providing copies of public records is not listed in the Assessor's enumerated duties found in I.C. §36-2-15-5.

ANALYSIS

The public policy of the APRA states that "(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." I.C. §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).

"Public record" means any writing, paper, report, study, map, photograph, book, card, tape recording, or other material that is created, received, maintained, or filed by or with a public agency and which is generated on paper, paper substitutes, photographic media, chemically based media, magnetic or machine readable media, electronically stored data, or any other material, regardless of form or characteristics. I.C. §5-14-3-2(m).

If (1) a person is entitled to a copy of a public record under this chapter; and (2) the public agency which is in possession of the record has reasonable access to a machine capable of reproducing the record; the public agency must provide at least one copy of the public record to the person. I.C. §5-14-3-8(e). The public agency may charge a fee, uniform to all purchasers, that does not exceed the agency's direct cost of supplying the information in that form. I.C. §5-14-3-8(g).

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). A state agency may adopt a rule or a political subdivision may enact an ordinance prescribing the conditions under which an entity who receives information on disk or tape may or may not use the information for commercial purposes. I.C. §5-14-3-3(e).

It is my understanding you originally requested the records in an electronic format. Your request was denied because the County did not want the data used for commercial purposes. Pursuant to I.C. §5-14-3-3(e), the County may enact an ordinance restricting the use of the information for commercial purposes when it is provided on disk or tape. I do not understand such an ordinance has been enacted in Switzerland County. Further, I understand from your complaint and attachments that the Assessor's vendor, Manatron, is relatively easily able to

create a copy of the public records you request. I do not understand it to be the case that the medium you request is incompatible with the Assessor's data storage system or that you are asking the Assessor to reprogram its system to provide you with the records you request. If these elements are indeed true, it is my opinion the Assessor is required to provide a copy of the record to you pursuant to I.C. §5-14-3-8(e). Further, the Assessor may charge you a fee not to exceed the direct cost of supplying the information in the requested form.

If the County has enacted or does enact an ordinance restricting the use of the information for commercial purposes and you again request the information via paper copies, the County has asserted it is not required to provide copies of the requested information. To the contrary, I believe I.C. §5-14-3-8(e) requires the Assessor to provide at least one copy of any records requested as long as the Assessor has reasonable access to a machine capable of reproducing it. I understand the County's assertion that the office cannot conduct personal services for a requester. The APRA is very clear that a public agency is required to provide copies of documents. In this matter, the County is required by the APRA to provide copies of requested documents. While the APRA does caution the public agency to regulate any material interference with the regular discharge of duties of the public agency when fulfilling requests for records, I.C. §5-14-3-7(a), a public agency may not cite lack of resources to deny access to records. I.C. §5-14-3-7(c). *See Opinion of the Public Access Counselor 07-FC-67.*

Regarding the FedEx Airbill, I see no reason it cannot be used to ship the documents to you, regardless of whether they are shipped in an envelope or several boxes.

CONCLUSION

For the foregoing reasons, I find that absent an enacted ordinance restricting the use of the information for commercial purposes, the Switzerland County Assessor is required by the APRA to provide an electronic copy of the requested records and may charge you a fee not to exceed the direct cost of providing the records in the electronic format you request. If there is an ordinance restricting the use of the information for commercial purposes, I find that the Assessor is required to provide you with copies of the requested records.

Best regards,



Heather Willis Neal
Public Access Counselor

cc: Joan Armstrong, Switzerland County Assessor
W. Gregory Coy, Switzerland County Attorney