

August 27, 2007

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

Re: Formal Complaint 07-FC-223; 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 the Warren County Auditor (“Auditor”) violated the Access to Public Records Act (“APRA”) (Ind. Code §5-14-3) by denying your request for paper copies of the most recent tax/assessment roll. A copy of the Auditor’s response to your complaint is enclosed for your reference. I find that the Warren County Auditor is required by the APRA to make copies records responsive to the request.

BACKGROUND

Your complaint follows *Opinion of the Public Access Counselor 07-FC-131*, issued by Counselor Davis on June 13, 2007. In that opinion, Counselor Davis opined the Auditor must make reasonable efforts to provide to First American a copy of all disclosable data on paper. You allege that following that opinion, the Auditor, by letter from attorney Nancy Litzenberger dated June 29, indicated it would not produce copies for you but would provide you access to the records. Because no further detail was provided, you have assumed this denial is based on the previous assertion that the Auditor lacks sufficient staffing to provide the copies. Your complaint, filed July 27, is that the Auditor’s refusal to provide copies based on staffing shortages violates the APRA.

In response to your complaint, the Auditor responded by letter from Ms. Litzenberger dated August 20. Ms. Litzenberger disagrees with the interpretation by Counselor Davis that the APRA requires public agencies to make paper copies of records. Ms. Litzenberger asserts that the public agency may choose whether to make copies or allow access to the requester to make his own copies. Ms. Litzenberger asserts that “provide” does not mean a public agency’s employees must make the copies.

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 Auditor 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 Auditor 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).

A public agency shall either provide the requested copies to the person making the request or allow the person to make copies on the agency's equipment or on the person's own equipment. I.C. §5-14-3-3(b).

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. If a public agency does not have reasonable access to a machine capable of reproducing the record, the person is only entitled to inspect and manually transcribe the record. 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). The agency may require payment of the copy fee in advance. I.C. §5-14-3-8(e).

Because this specific matter has been addressed in *Opinion of the Public Access Counselor 07-FC-131*, the only issue I will address is whether the Auditor's staff must make copies for the requester pursuant to this request. While Section 3(b) of the APRA indicates an agency shall either provide copies or allow access to records, Section 8(e) makes it clear an agency is to provide copies when it has reasonable access to a machine capable of reproducing the record. I.C. §5-14-3-8(e) and I.C. §5-14-3-3(b).

The Auditor here asserts the word "provide" in Section 8(e) does not mean the agency must make the copies. "When interpreting a statute the words and phrases in a statute are to be given their plain, ordinary, and usual meaning unless a contrary purpose is clearly shown by the statute itself." *Journal Gazette v. Board of Trustees of Purdue University*, 698 N.E.2d 826, 828 (Ind. App. 1998). Statutory provisions cannot be read standing alone; instead, they must be construed in light of the entire act of which they are a part. *Deaton v. City of Greenwood*, 582 N.E.2d 882 (Ind. App. 1991). "Provide" means to "supply or furnish," to "afford or yield," or "to prepare, make ready, or procure beforehand." *New Illustrated Webster's Dictionary of the English Language* 780 (1992). Further, "provide" as used in Section 3(b)(1) clearly means the

public agency is to make a copy, as it is followed by “or” and then Section 3(b)(2), which allows the requester to make a copy. We must assume provide was used by the legislature to convey the same meaning in the two different sections. As such, I agree with previous public access counselors that Sections 3(b)(1) and 8(e) together to require a public agency to make copies of records upon request when the agency has reasonable access to a copy machine.

Regarding the Auditor’s assertion that staffing shortages would not allow the office to make copies pursuant to the request, the APRA addresses the issue and this office has interpreted it. Although the Auditor shall regulate any material interference with the regular discharge of the functions and duties of the public agency, I.C. §5-14-3-7(a), the Auditor may not cite the lack of resources as a reason to deny a person their rights under the Access to Public Records Act. *See I.C. §5-14-3-7(c). Opinion of the Public Access Counselor 07-FC-67.*

CONCLUSION

For the foregoing reasons, I find that the Warren County Auditor is required by the APRA to make copies of records responsive to the request.

Best regards,



Heather Willis Neal
Public Access Counselor

cc: Michelle Hetrick, Warren County Auditor
Nancy Litzenberger, Warren County Attorney