

September 4, 2007

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

Re: Formal Complaint 07-FC-234; Alleged Violation of the Access to Public Records Act by the Boone County Recorder

Dear Mr. Bohrer:

This is in response to your formal complaint alleging the Boone County Recorder (“Recorder”) violated the Access to Public Records Act (“APRA”) (Ind. Code §5-14-3) by denying your request for digital images corresponding to daily recordings for Boone County. It is my opinion the Boone County Recorder has a duty to provide the requested records to First American and in the interim should provide First American with an estimated timeline for production of the records.

BACKGROUND

You allege that on April 12, 2007 First American requested via telephone an electronic copy of the digital images corresponding to daily recordings for Boone County beginning on that date and going forward. The Recorder, Mary Alice Baldwin, indicated to your representative the request was denied because First American is not a “local” company. Ms. Baldwin also instructed your representative that your access to the images would be limited to on-site inspection and paper duplication at the cost of \$1.00 per image. You renewed your request in writing on June 29 and clarified the request on June 29. Receiving no response, you submitted your complaint on August 4, and I received it on August 7.

The Recorder responded to your complaint by letter dated August 7. Ms. Baldwin indicated she inadvertently laid the request aside and failed to respond in a timely manner. Ms. Baldwin included a copy of her August 1 response to you, wherein she indicated that since the primary source of funding for the office is through the sale of copies of documents, the rate for copies is \$1.00 per page except for authorized bulk users who receive a reduced rate. Because the statute regarding bulk users excludes anyone whose primary purpose is the resale of those

public records, Ms. Baldwin asked you to provide proof the primary purpose of your request is not to resell the records.

You replied to Ms. Baldwin on August 9, indicating First American's primary purpose is not to resell the records requested. You indicated Ms. Baldwin might be confusing First American with another subsidiary of your parent corporation but that First American does not resale public records. Instead, First American collects publicly available real property information from county offices throughout the country, transforms and integrates the data into its products, and provides this information to its customers. The images First American requests will be utilized as a source for keying in data in text form, and the images will not be resold. You also provide a copy of a letter you sent to the Indiana County Recorders' Association clarifying this.

Ms. Baldwin then responded to you by letter dated August 16, indicating that because of new state statutes requiring redaction technology, her office is not currently selling electronic or film images. She did not provide an indication when the records would be available to you.

You responded to Ms. Baldwin pointing out that I.C. §36-2-7.5-8(b), requiring redaction of Social Security numbers, does not take effect until December 31, 2007. Further, Ms. Baldwin has indicated her office's redaction has been completed.

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 Recorder 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 Recorder 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).

The first issue to address here is Ms. Baldwin's assertion in response to First American's April 12 request that the records would not be provided because First American is not a local company. While the time for filing a complaint on this particular issue has passed, I believe it worth noting here that nothing in the APRA allows denial of disclosure based on the domicile of the requester.

As to the issue at hand in this formal complaint, I believe that the Recorder has agreed, as do I, that First American is entitled to receive the records as a bulk user since it has confirmed it will not be reselling the public records. As such, the issue I address here is whether the

Recorder's assertion that her office "has some issues to work out before any more images are sold" is acceptable under the APRA.

I understand Ms. Baldwin's assertion that her office has been preparing its records in advance of the December 31 effective date of I.C. §36-2-7.5-8(b), requiring redaction of Social Security numbers. I also understand Ms. Baldwin indicates her office has completed the redaction process but has some issues to work out before she will sell any more images.

There are no prescribed timeframes when the records must be produced by a public agency. A public agency is required to regulate any material interference with the regular discharge of the functions or duties of the public agency or public employees. I.C. §5-14-3-7(a). However, section 7 does not operate to deny to any person the rights secured by section 3 of the Access to Public Records Act. I.C. §5-14-3-7(c). The public access counselor has stated that records must be produced within a reasonable period of time, based on the facts and circumstances. Consideration of the nature of the requests (whether they are broad or narrow), how old the records are, and whether the records must be reviewed and edited to delete nondisclosable material are necessary to determine whether the agency has produced records within a reasonable timeframe.

In this case, the records have been redacted. Ms. Baldwin does not provide a description of the issues her office needs to work out before any more images are sold. While the APRA requires a public agency to regulate any material interference with the regular discharge of its functions, and certainly installing redaction technology pursuant to state statute constitutes as such, this provision does not operate to deny any person the right to access to the records under the APRA. I.C. §5-14-3-7. I see no reason First American should be denied access to the requested records. Absent further information from the Recorder regarding the nature of the issue to be addressed, I find her indication that she has no idea when the records will be available to be unreasonable under the APRA. At the very least, the Recorder should provide First American with an anticipated timeline regarding when the records will be available.

CONCLUSION

For the foregoing reasons, it is my opinion the Boone County Recorder has a duty to provide the requested records to First American and in the interim should provide First American with an estimated timeline for production of the records.

Best regards,



Heather Willis Neal
Public Access Counselor

cc: Mary Alice Baldwin, Boone County Recorder