

December 4, 2007

Brad Bohrer  
First American CoreLogic, Inc.  
4 First American Way  
Santa Ana, CA 92707

*Re: Formal Complaint 07-FC-336; Alleged Violation of the Access to Public Records Act by the Boone County Assessor*

Dear Ms. Bohrer:

This advisory opinion is in response to your formal complaint alleging the Boone County Assessor (“Assessor”), violated the Access to Public Records Act (“APRA”) (Ind. Code 5-14-3) by denying you electronic access to records, specifically to the most recent tax assessment roll. It is my opinion the Assessor must provide you with the cost estimate for the information in the format you seek and then must provide you with the records so long as you agree to pay the associated fee.

#### BACKGROUND

You allege that you submitted a request to the Assessor on September 28, 2007 for an electronic copy of the most recent tax/assessment roll. On October 3 the county’s information technology director, Sean Horan, responded to your request. Mr. Horan indicated that while the county could not provide the information as requested, the county would be able to do so with the assistance of the county’s records management vendor. Mr. Horan requested a “detailed breakdown” of all data you sought. The information would then be used to obtain a price estimate from the vendor for your consideration. You allege that you spoke with Mr. Horan on October 10 to provide him with the requested information. You also provided the information via electronic mail that day, and you have submitted a copy of that electronic mail with this complaint. You allege that subsequent telephone and email inquiries to Mr. Horan have gone unanswered. You filed this complaint on November 5, alleging denial of access.

Mr. Horan submitted to this office a copy of a letter dated November 5, addressed to a Fran Hammer. I cannot ascertain whether the letter was intended to be sent to First American, was actually sent to First American, or was intended for a different recipient. The language of the letter mirrors the language of Mr. Horan’s October 3 letter to you, seeking a “detailed

breakdown” of all the data you are requesting. I have received no response to your complaint from the Assessor or Mr. Horan although I invited them to respond to the complaint.

## ANALYSIS

The public policy of the APRA states, "(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." Ind. Code §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).

Here the Assessor, through Mr. Horan, has agreed in principle to provide you with the request records. Mr. Horan requested further information from you in order to obtain a cost estimate for providing the information. Absent statutory authority excepting the records from disclosure, the Assessor is required by the APRA to provide you the records pursuant to your request. I.C. §5-14-3-3. Further, the Assessor must make reasonable efforts to provide the records in the medium you request. I.C. §5-14-3-3(d). It appears here that the Assessor, through Mr. Horan, began the reasonable effort required to provide the records.

I am unclear why Mr. Horan has not communicated with you in response to your follow-up inquiries. I am further puzzled by the letter I have received addressed to Ms. Hammer, with whom I am not familiar.

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). This office has stated that records must be produced within a reasonable period of time, based on the facts and circumstances. I do not believe it is unreasonable for the Assessor to take the necessary time to make reasonable efforts to provide you the records in the medium requested. Here, though, it is my understanding it has been nearly two months since you last heard from Mr. Horan regarding the price estimate. Even if Mr. Horan is waiting for a price estimate from the vendor, two months seems to be an unreasonable amount of time to await a price quote.

Further, I always counsel public agencies to keep in communication with a requester when a request is taking a considerable length of time to produce or when outstanding issues are present. Here, the outstanding issue is what the cost will be for the records and whether First American will agree to pay the costs for the records. First American cannot make that determination absent further information from Mr. Horan. As such, it is my opinion the Assessor, through Mr. Horan if it is his responsibility, has a duty to provide you with the necessary information to allow you to make the decision.

#### CONCLUSION

For the foregoing reasons, it is my opinion the Assessor has violated the APRA by taking an unreasonable length of time to respond to your request for a cost estimate for the production of records you have requested.

Best regards,



Heather Willis Neal  
Public Access Counselor

cc: Lisa Garoffolo, Boone County Assessor  
Sean Horan, Boone County IT Director