

December 12, 2007

Craig Franke
PO Box 421195
Indianapolis, Indiana 46242-1195

Re: Formal Complaint 07-FC-351; Alleged Violation of the Access to Public Records Act by the St. Joseph County Auditor

Dear Mr. Franke:

This advisory opinion is in response to your formal complaint alleging the St. Joseph County Auditor (“Auditor”) violated the Access to Public Records Act (“APRA”) (Ind. Code 5-14-3) by denying you access to records. I have enclosed a copy of the Auditor’s response to your complaint for your reference. In my opinion the Auditor violated the APRA by denying you access to inspect or copy the 2006 Surplus Status Report.

BACKGROUND

In your complaint you allege you submitted to the Auditor on or about October 1, 2007 and then again on or about November 15 a request for access to the “2006 Surplus Status Report” including copies of information from the tax sale book. You filed this complaint on November 21, alleging you were denied access to the records. You also claim you have paid the copy charges for the records but have not received them. You requested priority status but did not allege any of the reasons for priority status listed in 62 IAC 1-1-3, so priority status was not granted.

The Auditor responded to your complaint in a communication I received on December 11. The Auditor indicates that the Auditor and an outside vendor, SRI, print a form to be inserted into the delinquent tax sale book providing information regarding tax sales of parcels with delinquent real estate taxes including but not limited to the information regarding tax sale surplus. The Auditor has offered you access to these records. The Auditor indicates that the record you seek contains the same information. The Auditor further contends this record is rarely printed and is used internally by the Auditor. The Auditor further indicates that when you request records, you do so be telephone, and you do not submit a written request. Finally, the Auditor asserts that you have not paid for any copies.

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." I.C. §5-14-3-1. Any person has the right to inspect and copy the public records of a public agency 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).

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).

A "public record" means any writing, paper, report, study, map, photograph, book, card, tape recording or other material that is created, received, retained, maintained or filed by or with a public agency. I.C. §5-14-3-2. Further, a record created for or on behalf of a public agency is a public record. *Knightstown Banner v. Town of Knightstown*, 838 N.E.2d 1127 (Ind. Ct. App. 2005).

A request for records may be oral or written. I.C. §5-14-3-3(a); §5-14-3-9(c). If the request is made orally or by personal appearance in the office and the agency does not respond to the request within 24 hours of receipt, the request is deemed denied. I.C. §5-14-3-9(a).

Here, you have requested access to the 2006 Surplus Status Report. The Auditor contends the information contained in that report is also contained in another report, to which you have been granted access. It is my understanding these documents are two different records. The APRA does not allow the Auditor to provide access to just one of the two records and deny access to the other based on the premise that the two records contain the same or similar information. Further, the APRA does not allow the Auditor to deny access to a record on the basis that the record is rarely printed or used only internally. You have requested a copy of a public record, and the Auditor must provide you access to inspect and copy that record unless an exception to disclosure exists. I.C. §5-14-3-3(a).

Regarding the Auditor's indication that your requests for records are made by telephone, a request for records may be oral or written. I.C. §5-14-3-3(a); §5-14-3-9(c). The Auditor may require a request to be made in writing in or on a form prescribed by the Auditor. I.C. §5-14-3-3(a)(2). If the Auditor requires requests in writing, he should let you know that. If the Auditor has prescribed a form for the request, he should make available the form or guidelines for requests.

Regarding copy fees, a public agency may not charge a fee to search for, examine, or review a record to determine whether the record may be disclosed. I.C. §5-14-3-8(b). The fiscal body, or governing body if there is no fiscal body, of a public agency shall establish a fee schedule for the certification or copying of documents. The fee for copying documents may not

exceed the greater of ten cents per page for non-color copies or the actual cost to the agency of copying the document. I.C. §5-14-3-8(d).

CONCLUSION

For the foregoing reasons, it is my opinion the Auditor violated the Access to Public Records Act by denying your request for access to the 2006 Surplus Status Report.

Best regards,



Heather Willis Neal
Public Access Counselor

cc: Mitchell Heppenheimer, Heppenheimer & Korpala
Mike Eby, St. Joseph County Auditor