



# STATE OF INDIANA

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October 14, 2010

Ms. Sharon LeVeque  
P.O. Box 343  
Bremen, IN 46506

*Re: Formal Complaint 10-FC-242; Alleged Violation of the Access to Public Records Act by the St. Joseph County Assessor's Office*

Dear Ms. LeVeque:

This advisory opinion is in response to your formal complaint alleging the St. Joseph County Assessor's Office (the "Assessor") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* The Assessor's response is enclosed for your reference. I note that I granted your request for priority status under 62 Ind. Admin. Code 1-1-3(3).

## BACKGROUND

In your complaint, you allege that on August 31, 2010, you requested "all the Rental [sic] sales Used [sic] to determine what the Gross Rent Multipliers [sic] in St. Joseph County" for 2006 through 2010. Specifically, your request sought the addresses, selling price, selling date, and monthly collected rents of all the properties in St. Joseph County. You believe this information should be released. You note that landlords advertise their rental data and incentives to the public, which you believe is no different than the seller disclosure information that includes the sale date, price, concessions, circumstances, and names and addresses of the buyer and seller.

Attorney Frank Agostino responded to your complaint on behalf of the Assessor. Mr. Agostino states that the Assessor has informed you repeatedly that income information is confidential under I.C. § 6-1.1-35-9. Mr. Agostino states that the Assessor has provided you with all non-confidential information, including the gross rent multipliers for neighborhoods. He notes that the gross rent multiplier is the sales price divided by the asked-for rent.

## 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 does not contest that it is 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 Assessor’s public records during regular business hours unless the records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. I.C. § 5-14-3-3(a).

The APRA prohibits public agencies from releasing records declared confidential by state statute. I.C. § 5-14-3-4(a)(1). Under I.C. § 6-1.1-35-9, “[a]ll information that is related to earnings, income, profits, losses, or expenditures” that is given by a person to an assessing official is confidential. Accordingly, the Assessor denied you access to income information relating to rental properties in St. Joseph County. In my opinion, the Assessor is required by statute to keep such information confidential. I understand your argument that the income information is often voluntarily released by landlords who advertise it to the public. However, some landlords may choose not to release the information, even if they have done so in the past. Moreover, even if they release it to the public voluntarily through other sources, that does not relieve the Assessor of its statutory duty to keep such information confidential. The APRA provides criminal penalties for public officials and employees who knowingly or intentionally disclose information classified as confidential by state statute. *See* I.C. § 5-14-3-10(a). Consequently, in my opinion the Assessor has not violated the APRA by denying you access to the properties’ income information.

## CONCLUSION

For the foregoing reasons, it is my opinion that the Assessor did not violate the APRA.

Best regards,



Andrew J. Kossack  
Public Access Counselor

Cc: Frank J. Agostino