



STATE OF INDIANA

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August 23, 2011

Mr. Marc L. Griffin
821 N. Madison Avenue
Greenwood, Indiana 46142-4128

Re: Formal Complaint 11-FC-208; Alleged Violation of the Access to Public Records Act by the Warrick County Assessor

Dear Mr. Griffin:

This advisory opinion is in response to your formal complaint alleging the Clay County Assessor ("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 have granted your request for priority status pursuant to 62 Ind. Admin. Code 1-1-3(3).

BACKGROUND

In your complaint, you allege on August 11, 2011 you requested in writing from the Assessor all pages from the most currently filed Form G & O-1, State Form 9931 ("Form") for the following oil and gas leases:

Strange Unit # 1
Richmon-Hilburn Unit

You provided in your request that you are a person who may bid on an oil or gas interest at the upcoming Warrick County Treasurer's tax sale on September 16, 2011. You allege that the Assessor provided incomplete information in response to your request, specifically all information from page 1 of the Form, the allocation of the applicable percentage interest among the owners of the oil or gas interest (including the names and addresses of all owners) as indicated on page 2 of the Form, and the Form for all leases that are a part of the unit, which were needed in order to determine the value of the oil interest that is the subject of the property tax sale due to the allocation in lieu of the actual production of the lease.

In response to your formal complaint, the Assessor advised that she denied or redacted information in response to your request after consulting with the Warrick County Attorney and other Assessors' Offices (and their counsel) in the Southwest

District of the state. The parties were of the belief that only the information that pertained to the individual interest of the tax sale should be released. The Assessor was attempting to make the necessary adjustments to disclosure in light of the changes that were made when I.C. § 6-1.1-35-9(g) went into effect on July 1, 2011.

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.” *See* I.C. § 5-14-3-1. The Assessor is a public agency for the purposes of the APRA. *See* 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. *See* I.C. § 5-14-3-3(a).

A request for records may be oral or written. *See* I.C. § 5-14-3-3(a); § 5-14-3-9(c). If the request is delivered in person and the agency does not respond within 24 hours, the request is deemed denied. *See* I.C. § 5-14-3-9(a). If the request is delivered by mail or facsimile and the agency does not respond to the request within seven (7) days of receipt, the request is deemed denied. *See* I.C. § 5-14-3-9(b). A response from the public agency could be an acknowledgement that the request has been received and information regarding how or when the agency intends to comply. Here, the Assessor responded to your request within the timelines prescribed by the APRA.

The term “oil or gas interest” includes, but is not limited to royalties, overriding royalties, mineral rights, or working interest in any oil or gas located on or beneath the surface of land which lies within the State. *See* I.C. § 6-1.1-4-12.4. Oil and gas interests are subject to assessment and taxation as real property. *Id.* I.C. § 6-1.1-35-9 provides that:

- (a) All information that is related to earnings, income, profits, losses, or expenditures and that is:
 - (1) give by a person to:
 - (A) an assessing official;
 - (B) an employee of an assessing official; or
 - (C) an officer or employee of an entity that contracts with a board or county commissioners or a county assessor under IC 6-1.1-36-12; or
 - (2) acquired by:
 - (A) an assessing official;
 - (B) an employee of an assessing official; or
 - (C) an officer or employee of an entity that contracts with a board of commissioners or a county assessor under IC 6-1.1-36-12; in the performance of the person’s duties; is confidential. The assessed

valuation of tangible property is a matter of public record and is thus not confidential. Confidential information may be disclosed only in a manner that is authorized under subsection (b), (c), (d), or (g).

There is no dispute among the parties that the information sought is generally considered to be confidential. In 2011, the Indiana General Assembly amended I.C. § 6-1.1-35-9 to include subsection (g), an exception to information deemed confidential under the statute. I.C. § 6-1.1-35-9(g) provides that:

(g) Confidential information concerning an oil or gas interest, as described in I.C. 6-1.1-4-12.4, may be disclosed by an assessing official if the interest has been listed on the delinquent property tax list pursuant to IC 6-1.1-24-1 and is not otherwise removed from the property tax sale under IC 6-1.1-24. A person who establishes that the person may bid on oil or gas interest in the context of a property tax sale may request from an assessing official all information necessary to properly identify and determine the value of the gas or oil interest that is subject of the property tax sale. The information that may be disclosed includes the following:

- (1) Lease Information.
- (2) The type of property being sold.
- (3) The applicable percentage interest and the allocation of the applicable percentage interest among owners of the oil or gas interest (including the names and addresses of all owners).

The official shall make information covered by this subsection available for inspection and copying in accordance with IC 5-14-3. Confidential information that is disclosed under this subsection loses its confidential status. A person that is denied the right to inspect or copy information covered by this subsection may file a formal complaint with the public access counselor under the procedure prescribed by IC 5-14-5. However, a person is not required to file a complaint under IC 5-14-5 before filing an action under IC 5-14-3.

The Assessor has not disputed that the properties in question have been listed on the delinquent property tax list pursuant to I.C. § 6-1.1-24-1 and are not otherwise removed for sale pursuant to I.C. § 6-1.1-24. Nor has the Assessor challenged your standing as one who has established yourself as a person that may bid on an oil or gas interest in the context of a property sale. The Assessor has provided that partial

information was disclosed in response to your request due the belief that only information that pertained to the individual interest of the tax sale should be released.

In part one of your complaint, you allege that the Assessor did not provide you with any information from page 1 of the Form. Under the APRA, a public agency that withholds a public record bears the burden of showing that the record is exempt. *See* I.C. §§ 5-14-3-1, 5-14-3-9(f) and (g). Exceptions to disclosure are narrowly construed. *See* I.C. § 5-14-3-1. Subsection (g) provides that “all information necessary to identify and determine the value of the gas or oil interest that is the subject of the property tax sale shall be disclosed.” As it relates to subsection (g), an accessing official that denies a request for access to information provided in the Form should provide reasoning in its denial as to why the type of information being withheld would not aid in identifying and determining the value of a gas or oil interest that is the subject of a property tax sale. *See Opinion of the Public Access Counselor 11-FC-200*. The “average daily production” is an example of information that is provided on page 1 of the Form. It would logically follow that knowing the average daily production of an oil and gas interest would assist the tax-sale purchaser in determining the value of the interest. It is my opinion that the Assessor has not met its burden in regards to part one of your complaint; as such it violated the APRA in its response to your records request.

In regards to the second part of your complaint, specifically the allocation of the applicable percentage interest among owners of the oil or gas interest (including the names and addresses of all owners), the General Assembly expressed its intent regarding this specific class of information by listing it as an example in subsection (g) of information that may be disclosed. While I do acknowledge and share in the privacy concerns addressed by the Assessor, I can not ignore the clear mandate of the General Assembly, who provided that this specific class of information, *without exception*, be made available and lose its confidential status under the circumstances provided in subsection (g). (emphasis added). As there has been no showing that the nature of your request does not meet the relevant qualifications of subsection (g), it is my opinion that the Assessor violated the APRA when it redacted the information pursuant to your request. *See Opinion of the Public Access Counselor 11-FC-202*.

In regards to part three of your complaint, specifically a request for the Form for all leases that are a part of the unit, you provide that the information is needed in order to determine the value of the oil interest that is the subject of the property tax sale due to the allocation in lieu of the actual production of the lease. Subsection (g) provides that “all information necessary to identify and determine the value of the gas or oil interest that is the subject of the property tax sale shall be disclosed.” I find that the Assessor has not met its burden in showing that the record should be exempt from disclosure and why it would not aid the purchaser in properly identifying and determine the value of the gas and oil interest, thus it is my opinion that the Assessor violated the APRA in response to your request.

CONCLUSION

For the foregoing reasons, it is my opinion that the Assessor violated the APRA in response to your records request.

Best regards,

A handwritten signature in black ink, appearing to read "J. Hoage". The signature is written in a cursive style with a large initial "J" and a long, sweeping underline.

Joseph B. Hoage
Public Access Counselor

cc: Angela Wilder, Warrick County Assessor