



STATE OF INDIANA

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October 20, 2008

Amanda Siefert
21 Patterson Street
Greenwood, Indiana 46143

Re: Formal Complaint 08-FC-211; Alleged Violation of the Access to Public Records Act by the Lake County Auditor's Office

Dear Ms. Siefert:

This advisory opinion is in response to your formal complaint alleging the Lake County Auditor's Office ("Auditor") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by denying you access to records. In my opinion the Auditor has violated the APRA.

BACKGROUND

You filed the present complaint on September 26, 2008. You allege that in April 2008 you telephoned the Auditor and requested a copy of the tax sale record detailing the name and address of any entity which purchased property at the March 3, 2008 tax sale. You indicate the employee to whom you spoke immediately sent you the list by facsimile transmission. You further allege that in May 2008 you called to request a copy of the same record for the March 31, 2008 tax sale. You allege the employee to whom you spoke told you the office does not maintain a list because the contractor had not yet provided it to the Auditor. You further allege that you spoke to a representative from the contractor who indicated the list was prepared but had to be requested by the Auditor.

You allege that after you spoke to the contractor, you again telephoned the Auditor and requested the list. The Auditor indicated the list does exist but cannot be faxed. The employee further indicated the copy machine in the office was not available for public use. The Auditor indicated you would need to come to the office to transcribe the names and addresses. You indicated that the contractor would fax you the list if the Auditor telephoned the contractor and instructed the contractor to do so. The employee reiterated that you could only obtain the list by coming to the office and transcribing it. The employee indicated you would need to complete the public access request form and provide a copy of your driver license.

You further allege that on September 4 you called the Auditor and told the same employee you would be driving to the office on September 5 to obtain the list. You allege the employee told you the list would be available. When you arrived at the office on September 5, the Auditor provided you with a list of the names of all purchasers. You indicated that Indiana law required the address of entities as well. The employee told you that no such list exists. You again told the employee that the contractor maintains such a list, but the employee refused to obtain the list from the contractor.

My office sent a copy of the complaint to the Auditor and invited the Auditor to respond to the complaint, but as of this date my office has received no response 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." I.C. § 5-14-3-1. The Auditor is clearly a public agency for the purposes of the APRA. I.C. § 5-14-3-2(m). 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).

As you contend, Indiana law is instructive as to what information the Auditor must maintain related to tax sales:

Tax sale record

Sec. 8. Each county auditor shall maintain a tax sale record on the form prescribed by the state board of accounts. The record shall contain:

- (1) a description of each parcel of real property:
 - (A) that is sold under IC 6-1.1-24;
 - (B) on which a county acquires a lien under IC 6-1.1-24-6; or
 - (C) for which a certificate of sale is purchased under IC 6-1.1-24;
- (2) the name of the owner of the real property at the time of the:
 - (A) sale;
 - (B) lien acquisition; or
 - (C) certificate of sale purchase;
- (3) the date of the:
 - (A) sale;
 - (B) lien acquisition; or
 - (C) certificate of sale purchase;
- (4) the name and mailing address of the:
 - (A) purchaser of the property and the purchaser's assignee; or
 - (B) purchaser of the certificate of sale;
- (5) the amount of the minimum bid;
- (6) the amount for which the:

- (A) real property; or
 - (B) certificate of sale;
- is sold;
- (7) the amount of any taxes paid by the:
 - (A) purchaser of the real property or the purchaser's assignee; or
 - (B) purchaser of the certificate of sale;
- and the date of the payment;
- (8) the amount of any costs certified to the county auditor under section 2(e) of this chapter and the date of the certification;
 - (9) the name of the person, if any, who redeems the property;
 - (10) the date of redemption;
 - (11) the amount for which the property is redeemed;
 - (12) the date a deed, if any, to the real property is executed; and
 - (13) the name of the grantee in the deed.

I.C. § 6-1.1-25-8.

The Auditor is required to maintain a record containing the information you have requested. No provision of I.C. 6-1.1-25, nor any other provision of Indiana law I find, declares this information confidential or otherwise nondisclosable. As such, the Auditor is required to make the record containing this information available for inspection and copying. See I.C. § 5-14-3-3.

To the extent the record is maintained by an outside contractor on behalf of the Auditor, this is not an excuse for nondisclosure. The Indiana Court of Appeals has ruled that records created for or on behalf of a public agency by an outside contractor are public records. *Knightstown Banner v. Town of Knightstown*, 838 N.E.2d 1127 (Ind. Ct. App. 2005). Under *Knightstown Banner*, the records created by the contractor for or on behalf of the Auditor are public records, even if they are maintained by the contractor. The Auditor has a duty to obtain those records from the contractor to make them available for inspection and copying.

Regarding the Auditor's claim that the copier in the office may not be used by the public, nothing in the APRA requires a public agency to allow members of the public to use the agency's copying equipment. It is my opinion, though, that the Auditor must provide you copies of the records. If a person is entitled to a copy of a public record under the APRA and the agency has reasonable access to a machine capable of reproducing the record, the public agency must provide at least one copy of the record to the person. If the agency does not have reasonable access to such a machine, the person is entitled only to inspect and manually transcribe the record. An agency may require that the payment for copying costs be made in advance. I.C. § 5-14-3-8(e).

Here, it is my understanding the Auditor has reasonable access to a copy machines. As such, it is my opinion the Auditor is required under the APRA to provide you a copy of the requested record. The Auditor may charge a copy fee as prescribed by I.C. § 5-14-3-8.

Finally, you complain that the Auditor has indicated you are required to provide your driver license in order to obtain access to public records. Certainly the Auditor may require you to complete a form to request access to records, as I.C. § 5-14-3-3(a) allows an agency to require requests to be made on or in a form prescribed by the agency. The APRA is not instructive as to what may be required on the form. But a public agency may not deny or interfere with the exercise of the right to records under the APRA. I.C. § 5-14-3-3(b). Although it is true that no provision of the APRA specifically prohibits a public agency from requiring a driver license, there is no provision permitting this practice as a condition for receiving records. Because the public policy of the APRA places the burden of proof for the denial of a record on the public agency, the public agency would have to sustain its denial of records when a person refuses to provide a copy of a driver license. In the absence of a specific statute allowing such a condition to be placed on receiving access to records, it is my opinion the agency would be unable to sustain the denial. *See* I.C. § 5-14-3-1. In my opinion the Auditor violated the Access to Public Records Act if a driver license was required in order to receive access to the records. *See Opinion of the Public Access Counselor 06-FC-210.*

CONCLUSION

For the foregoing reasons, it is my opinion the Auditor has violated the APRA.

Best regards,



Heather Willis Neal
Public Access Counselor

Cc: Peggy Katona, Lake County Auditor