



STATE OF INDIANA

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October 31, 2008

Steve McKinney
Indiana Department of Local Government Finance
100 North Senate Avenue
Indianapolis, Indiana 46204

Via facsimile transmission to smckinney@dlgf.in.gov

Re: Informal Inquiry 08-INF-42 regarding Indiana Department of Local Government Finance

Dear Mr. McKinney:

This opinion is in response to your informal inquiry dated October 22, 2008. You write on behalf of the Indiana Department of Local Government Finance ("Department") to inquire about records maintained by township assessors to which access has been requested pursuant to the Access to Public Records Act ("APRA") (Ind. Code 5-14-3). You inquire whether all or part of the Form G & O-1 may be disclosed by the assessors. Pursuant to I.C. § 5-14-4-10(5), I issue the following opinion in response to your inquiry.

BACKGROUND

The Department inquires whether certain information contained on the Property Schedule for Gas and Oil Well Assessment form ("Form G & O-1") is disclosable. The form is filed with and maintained by township assessors. On the form is an indication the form is confidential pursuant to I.C. § 6-1.1-35-9. The requester contends that not all of the information contained on the form is confidential and as such has requested access to the information contained in sections 1 and 2 as well as all of page 2 of the form.

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. A Township Assessor's office 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 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).

Pursuant to I.C. § 5-14-3-4(a)(1), records declared confidential by state statute may not be disclosed by a public agency absent a state or federal statutory requirement for disclosure or an order of court under the rules of discovery. Here, the records at issue are addressed in I.C. § 6-1.1-35-9, which provides the following:

- (a) All information that is related to earnings, income, profits, losses, or expenditures and that is:
 - (1) given 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 of county commissioners or a county assessor under IC 6-1.1-36-12;
 - (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 county 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), or (d).

Subsections (b), (c), and (d) go on to list the entities to which the records may be disclosed. None of those are applicable here. I.C. § 6-1.1-35-11 and 12 provide sanctions and remedies for disclosure of information classified as confidential by I.C. § 6-1.1-35-9.

In my opinion, I.C. § 6-1.1-35-9 does not make the entire Form G & O-1 confidential. It does, though, make confidential “all information that is related to earnings, income, profits, losses, or expenditures.” In my opinion, the information contained in Sections 1 and 2 of the Form G & O-1 is not necessarily “related to earnings, income, profits, losses or expenditures.” This information appears to me to be basic identifying information for the entity submitting the form. Sections 3, 4, and 5 appear to contain exactly the type of information contemplated by I.C. § 6-1.1-35-9. The large section on the second page, the section entitled Allocation of Royalty and Working Interest Assessments, also appears to contain the type of information contemplated by I.C. § 6-1.1-35-9. Finally, the last two sections contain the acknowledgement of the filer and notary information, neither of which seem to be the type of information classified as confidential by I.C. § 6-1.1-35-9. Because the information listed in sections 1 and 2 and in the Acknowledgement and Notary sections are not specifically classified as confidential, it is my opinion that information must be disclosed.

If a public record contains disclosable and nondisclosable information, the public agency shall, upon receipt of a request under this chapter, separate the material that may be disclosed and make it available for inspection and copying. I.C. § 5-14-3-6. Here, it is my opinion that sections 1 and 2 of the Form G & O-1 as well as the Acknowledgement and Notary sections contain information not classified as confidential and therefore required to be disclosed upon request. Further, it is my opinion that the information contained on the remainder of the form is classified as confidential pursuant to I.C. § 6-1.1-35-9. As such, it is my opinion the remainder of the form (specifically sections 3, 4 and 5 and the large section on page 2) cannot be disclosed absent a state or federal statute or order of the court requiring disclosure.

Ultimately, the burden of proof to sustain a denial of access rests with the public agency which would deny access to disclosure. I.C. § 5-14-3-1. If a township assessor contends the entire form contains information “related to earnings, income, profits, losses, or expenditures,” the township assessor’s office would bear the burden of proof to sustain the denial if the requester sought relief in court.

Please do not hesitate to contact our office if we can be of further assistance.

Best regards,



Heather Willis Neal
Public Access Counselor

Cc: Reid Everling