



STATE OF INDIANA

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January 29, 2013

Ms. Sharon LeVeque
8841 Sycamore Drive
Bremen, Indiana 46506

Re: Formal Complaint 13-FC-18; Alleged Violation of the Access to Public Records Act by the Marshall County Assessor's Office

Dear Ms. LeVeque:

This advisory opinion is in response to your formal complaint alleging the Marshall County Assessor ("Assessor") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Debbie Dunning, Marshall County Assessor, responded in writing to your formal complaint on behalf of the Assessor. Her response is enclosed for your reference. I have granted your request for priority status pursuant to 62 IAC 1-1-3(3).

BACKGROUND

In your formal complaint you provide that on December 1, 2012, you submitted a written request to the Assessor for the 2012 Land Master by Township with the Gross Rent Multipliers ("GRM") by area for 2010-2012 along with the properties used to develop the GRM. On January 16, 2013, the Assessor provided you with the Land Order for Marshall County from 2002 and 2006-2012. In response to your request for the GRM, the Assessor denied your request pursuant to I.C. § 6-1.1-35-9, which provides that income information acquired by an assessing official is confidential information. Marshall County has collected income information for residential rental properties to attempt to arrive at the lowest of the three (3) approaches to value properties. The questionnaire that the county mails to its taxpayers states that the information that is requested is confidential and will only be used by county officials to determine an income approach of value to assess the rental property.

In response, you advised the Assessor that you did not seek records showing the income, address, or information identifying the property owner. Rather, you only sought the GRM that were used in which neighborhoods. The Assessor again responded and advised that the GRM is considered confidential. By providing the GRM, the Assessor would be giving you the tools need to infer the income. There are three components in the calculation of value using the income approach. One would need the income and rate

to calculate the value. If the party was aware of the value of the property and the Assessor thereafter provided the GRM, then anyone would be able to calculate the taxable rental income. You have been provided with GRM from other County Assessors and have provided the Assessor with copies of said records to indicate the non-identifiable information that is sought.

In response to your formal complaint, Ms. Dunning advised that your request for GRM information was denied pursuant to I.C. § 6-1.1-35-9. Marshall County does not have a large database of rental properties. The County uses an actual income submitted approach while larger counties utilize a market income approach. Landlords within the County complete an annual questionnaire disclosing the amount the landlord charges for rent per month/unit and their utility information. For verification, the landlord will also submit a copy of their Schedule E Federal Tax Form. The questionnaire that is submitted advises that the information that is submitted is confidential and will be utilized by the Assessor to ensure that the property's assessment is fair and equitable.

The County uses the income approach on sold rental properties to arrive at the GRM for specific areas/types of properties in the county. The GRM is determined by dividing the Sales Price by the Income (e.g. Sales Price/Income=GRM). The County uses the calculated GRM on each "unsold" rental property to calculate the income approach to value. The County is to use the lower of the three (3) approaches to determine value per the Indiana Code, which the income approach is one approach to value the property. Each year, the County uses the specific annual income that was submitted confidentiality and multiplies it by the GRM to arrive at the income approach value (e.g. Income x GRM = Value). The calculated assessed value is used if it is a lower value than the income approach or the sales comparison approach.

There are three components in the calculation of value using the income approach. If the Assessor was to release the GRM, then any individual would be able to determine the confidential income of each specific parcel (e.g. Assessed Value/GRM = Income). The assessed value for all properties is already available on the County's Beacon website; if the GRM is now provided, the Income would be able to be determined.

The County has provided you multiple records in response to your request, including sales information used in the GRM calculation, CD recordings of a August 2012 PTABOA hearing, and the County's Land Order from 2002 through 2012. Further, the County's GIS Beacon website provides the capability to print property record cards for assessment value information and to utilize the aerial maps. The Assessor is prohibited from providing you the specific GRM to be released as providing it would allow you to determine the income for said rental properties, which is considered to be confidential pursuant to I.C. 6-1.1-35-9. You would be able to request this information directly from the taxpayer that you are representing and the County will disclose the confidential information to the Indiana Board of Tax Review ("IBTR") during the course of a judicial proceeding in which the regularity of an assessment is questioned. *See* I.C. §

6-1.1-35-9(b)-(d). Contrary to what you have provided, you would be allowed to use the sales data of comparable properties to determine the market value at an IBTR hearing,

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 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. Under the APRA, a public agency denying access in response to a written public records request must put that denial in writing and include the following information: (a) a statement of the specific exemption or exemptions authorizing the withholding of all or part of the public record; and (b) the name and title or position of the person responsible for the denial. *See* I.C. § 5-14-3-9(c). Counselor O’Connor provided the following analysis regarding section 9:

Under the APRA, the burden of proof beyond the written response anticipated under Indiana Code section 5-14-3-9(c) is outlined for any *court action* taken against the public agency for denial under Indiana Code sections 5-14-3-9(e) or (f). If the public agency claimed one of the exemptions from disclosure outlined at Indiana Code section 5-14-3-4(a), then the agency would then have to either “establish the content of the record with adequate specificity and not by relying on a conclusory statement or affidavit” *to the court*. Similarly, if the public agency claims an exemption under Indiana Code section 5-14-3-4(b), then the agency must prove to the court that the record falls within any one of the exemptions listed in that provision and establish the content of the record with adequate specificity. There is no authority under the APRA that required the IDEM to provide you with a more detailed explanation of the denials other than a statement of the exemption authorizing nondisclosure, but such an explanation would be required if this matter was ever reviewed by a trial court. *Opinion of the Public Access Counselor 01-FC-47.*

The APRA states that a public agency may not disclose records that are “declared confidential by state statute.” I.C. § 5-14-3-4(a)(1). I.C. § 6-1.1-35-9 provides the following regarding certain confidential information:

Sec. 9. (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 commissions 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 county commissioners or a county assessor under IC 6-1.1-35-12;

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).

Confidential information may be disclosed during the course of a judicial proceeding in which the regularity of an assessment is questioned. *See* I.C. § 6-1.1-35-9(d); *See also Opinion of the Public Access Counselor 09-FC-154*. An assessing official or an employee of an assessing official shall immediately be dismissed from that position if the person discloses in an unauthorized manner any information that is classified as confidential under section 9. *See* I.C. § 6-1.1-35-11. Further, if a county or township official or an employee of such an official or board discloses in an unauthorized manner information that is classified as confidential under section 9, a person who owns property which the information pertains to may recover liquidated damages in the amount of five-hundred dollars (\$500); or the person’s actual damages resulting from the unauthorized disclosure. *See* I.C. § 6-1.1-35-12. Finally, a public employee or official who knowingly or intentionally discloses information classified as confidential by state statute commits a Class A infraction. *See* I.C. § 5-14-3-10.

The County has provided that it utilizes the actual income approach on sold rental properties to arrive at the GRM for specific areas/types of properties in the county. Upon receiving the actual income received by each landlord, the Assessor divides the Sales Price of the property by the Income to determine the GRM. There are three components in the calculation of value using the income approach; the GRM, Assessed Value, and Income. The Assessed Value divided by the GRM equals the Income received by the landlord. There is no dispute that the income from the rental property is considered to be

confidential pursuant to I.C. § 6-1.1-35-9. The Assessor has provided that the Assessed Value of the property is readily available via the County's website. Thus, if the GRM were also to be provided, one would be able to determine the Income for each property, which the Assessor is prohibited from doing. Thus, as applied specifically to the Assessor under the facts presented, it is my opinion that the Assessor would be prohibited from providing you with the GRM in light of the other information that is already made available by the County. As such, it is my opinion that the Assessor did not violate the APRA in response to your request. *See also Opinion of the Public Access Counselor 10-FC-242.*

CONCLUSION

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

Best regards,

A handwritten signature in black ink, appearing to read "J. Hoage". The signature is stylized with a large initial "J" and a cursive "Hoage".

Joseph B. Hoage
Public Access Counselor

cc: Debbie Dunning