



# STATE OF INDIANA

MICHAEL PENCE, Governor

PUBLIC ACCESS COUNSELOR  
LUKE H. BRITT

Indiana Government Center South  
402 West Washington Street, Room W470  
Indianapolis, Indiana 46204-2745  
Telephone: (317)233-9435  
Fax: (317)233-3091  
1-800-228-6013  
[www.IN.gov/pac](http://www.IN.gov/pac)

December 27, 2013

Mr. Joshua R. Rhoades  
C/o Ryan, LLC  
Capital Center North, Suite 810  
251 North Illinois, St.  
Indianapolis, IN 46204

*Re: Informal Inquiry 13-INF-66; Confidential Assessment Records*

Dear Mr. Rhoades:

This is in response to your informal inquiry regarding two separate situations in two separate counties wherein confidential information from a real estate assessment appeal was disclosed to a single third-party appraiser. Pursuant to Ind. Code § 5-14-4-10(5), I issue the following informal opinion in response to your inquiry. My opinion is based on applicable provisions of the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* and Ind. Code § 6-1.1-35 *et seq.*

## BACKGROUND

Your inquiry stems from two similar although distinct situations in which confidential information is believed to have been disclosed in an unauthorized manner. In the first situation, County No. 1 contracted with a third-party firm to assist with tax appeal issues. A taxpayer retailer submitted to County No. 1, an appeal package which included store-specific gross sales data. The County's contracting firm then allegedly disclosed the data to a non-contracted third party appraiser.

In the second instance, County No. 2 received from a taxpayer information regarding the taxpayer's income-generating property. That information, also given to County No. 2's contracted third-party vendor, was disclosed to the same non-contracted third party appraiser in the above scenario.

You frame your question as to the legality of the disclosure within the provisions of Ind. Code § 6-1.1-35 *et seq.* Please note Ind. Code § 6-1.1-35-9(c)(3) authorizes the Indiana Public Access Counselor to speak on these matters.

## 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* Ind. Code § 5-14-3-1. Indiana County’s are public agencies for the purposes of the APRA. *See* Ind. Code § 5-14-3-2. Accordingly, any person has the right to inspect and copy the County’s public records during regular business hours unless the records are excepted from disclosure as confidential or otherwise non-disclosable under the APRA. *See* Ind. Code § 5-14-3-3(a).

Public records declared confidential by state statute are required to be withheld under Ind. Code § 5-14-3-4(1). Therefore, the enumerated list of exceptions under Section 4 of the APRA is not exhaustive. To the point at hand, Ind. Code § 6-1.1-35-9(a) states the following:

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; 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 6-1.1-36-12; in the performance of the person's duties; is confidential.

In the first scenario you present, you suggest the annual gross sales of a taxpayer were disclosed to a non-contract third party assessor. Presumably, this entity would not fall under any of the enumerated exceptions in Subsection 9. Therefore, if a formal complaint was filed with this Office without any rebuttal evidence justifying the disclosure, a violation of the APRA and of Ind. Code § 6-1.1-35-9 would be declared.

Likewise, the second scenario you present alleges that financial information of income property was unlawfully disclosed. Both gross annual sales and the financial information of income property would be protected under Ind. Code § 6-1.1-35-9(a) and a similar violation would likely result.

Please note the penalties for such a violation are severe. Consider Ind. Code § 6-1.1-35-11:

(a) 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 of this chapter.

(b) If 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 discloses in an unauthorized manner any information that is classified as confidential under section 9 of this chapter:

(1) the contract between the entity and the board is void as of the date of the disclosure;

(2) the entity forfeits all right to payments owed under the contract after the date of disclosure;

(3) the entity and its affiliates are barred for three (3) years after the date of disclosure from entering into a contract with a board or a county assessor under IC 6-1.1-36-12; and

(4) the taxpayer whose information was disclosed has a right of action for triple damages against the entity.

While the Public Access Counselor has no enforcement authority over these matters, the facts as you present them would allow a trial court to levy these penalties if proven.

Please do not hesitate to contact me with any further questions.

Best regards,

A handwritten signature in black ink, appearing to read 'L. H. Britt', with a stylized flourish extending from the bottom.

Luke H. Britt  
Public Access Counselor