

July 16, 2007

Brad Bohrer, Senior Counsel  
First American Real Estate Solutions  
4 First American Way  
Santa Ana, California 92707

*Re: Formal Complaint 07-FC-159; Alleged Violation of the Access to Public Records Act by the Pulaski County Auditor*

Dear Mr. Bohrer:

This is in response to your formal complaint alleging the Pulaski County Auditor (“Auditor”) violated the Access to Public Records Act (“APRA”) (Ind. Code 5-14-3) by denying your request for an electronic copy of the most recent tax/assessment roll. I find that the Pulaski County Auditor is required by the APRA to provide an electronic copy of the requested records and may charge you a fee not to exceed the direct cost of providing the records in the electronic format you request.

#### BACKGROUND

You allege you first requested an electronic copy of the most recent tax/assessment roll from the Auditor on July 27, 2006. On August 2, 2006, the Auditor verbally agreed to authorize Manatron, the county’s record management system vendor, to provide the records. You allege the Auditor did not provide the authorization to Manatron. On December 1, 2006, the Auditor told First American Real Estate Solutions he was no longer willing to consent to providing the records in an electronic format. You renewed your request on May 9, 2007. You did not receive a response from the Auditor, so the request was deemed denied on May 17. On June 11, you spoke with the county attorney, Mr. Hizer, who indicated the request had been considered by the county commissioners and denied at their June 4 meeting. You sent a letter to the county commissioners on June 13 to confirm your understanding of the denial.

You submitted your complaint to this office on June 14, 2007. The Auditor provided an undated response, a copy of which I am enclosing.

## ANALYSIS

The Carroll County Auditor's office is a public agency for the purposes of the Access to Public Records Act. IC 5-14-3-2(l).

The public policy of the APRA is that all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees. Providing persons with the 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. IC 5-14-3-1.

A person filing a complaint with the public access counselor must file the complaint no later than thirty days after the denial of access. IC 5-14-5-7. If a person request by mail or facsimile a copy or copies of a public record, a denial of disclosure occurs when seven days have elapsed from the date the public agency receives the request. You indicate your last request was made on May 9, 2007, and you deemed it denied on May 17. You later learned the request was denied by the County Board of Commissioners on June 4. You filed your complaint on June 14, well within the statutory deadline of thirty days since the date of denial.

Any person may inspect and copy the public records of any public agency during the regular business hours of the agency, except as provided in section 4 of the Access to Public Records Act. IC 5-14-3-3(a). "Public record" means any writing, paper, report, study, map, photograph, book, card, tape recording, or other material that is created, received, maintained, or filed by or with a public agency and which is generated on paper, paper substitutes, photographic media, chemically based media, magnetic or machine readable media, electronically stored data, or any other material, regardless of form or characteristics. IC 5-14-3-2(m).

If (1) a person is entitled to a copy of a public record under this chapter; and (2) the public agency which is in possession of the record has reasonable access to a machine capable of reproducing the record; the public agency must provide at least one copy of the public record to the person. IC 5-14-3-8(e). The public agency may charge a fee, uniform to all purchasers, that does not exceed the agency's direct cost of supplying the information in that form. IC 5-14-3-8(g). Here the Auditor contracts with an outside vendor for maintenance of its records management system. The Auditor may charge you a fee that does not exceed the direct cost the outside vendor will charge the Auditor to provide the electronic copy of the records you seek.

A public agency that maintains or contracts for the maintenance of public records in an electronic data storage system shall make reasonable efforts to provide to a person making a request a copy of all disclosable data contained in the records on paper, disk, tape, drum or any other method of electronic retrieval if the medium requested is compatible with the agency's data storage system. IC 5-14-3-3.

It is my understanding you have requested the records in an electronic format (via 4mm, DAT, CD-ROM, email or FTP). Further, I understand from your complaint and attachments the Auditor's vendor, Manatron, is relatively easily able to create a copy of the public records you

request. I do not understand it to be the case the medium you request is incompatible with the Auditor's data storage system or that you are asking the Auditor to reprogram its system to provide you with the records you request.

In his response to you on May 10, 2007, the Auditor indicates he is denying the request for an electronic copy of the records because the "new system is not accurate and has to be corrected" and "The County Commissioners do not want these records put on the internet." The public agency bears the burden of proving a record is not disclosable or the agency has discretion regarding disclosure. The Auditor had failed to cite an enumerated exception to disclosure under IC 5-14-3-3. If the requested records contain non-disclosable information, the Auditor should separate the non-disclosable portion of the records and provide access to the disclosable portions. IC 5-14-3-6(a). Without further explanation from the Auditor regarding denial, I do not currently understand it to be the case there is non-disclosable information contained in the records requested.

If these elements are indeed true, I find the Auditor is required to provide a copy of the record to you pursuant to IC 5-14-3-8(e). Further, the Auditor may charge you a fee not to exceed the direct cost of supplying the information in the requested form.

#### CONCLUSION

For the foregoing reasons, I find that the Pulaski County Auditor is required by the APRA to provide an electronic copy of the requested records and may charge you a fee not to exceed the direct cost of providing the records in the electronic format you request.

Best regards,

Heather Willis Neal  
Public Access Counselor

cc: Thomas Shank, Pulaski County Auditor

*N.B. The nature of the complaint in 07-FC-159 is similar to several other complaints filed by your office on the same date, specifically 07-FC-158, 07-FC-160, 07-FC-163, 07-FC-164, and 07-FC-154. Because the facts as well as responses from the County Auditor differ in each case, I have issued separate opinions. To the extent there are similar facts from one complaint to another not necessarily provided by the Auditor, my finding in the respective complaint should be construed as being the same as that in the complaint with the most similar fact pattern. For instance, if another county has an ordinance similar to that in 07-FC-163, the presence of such an ordinance prohibiting commercial use of the information would change my opinion.*