

October 27, 2004

Mr. John L. Johantges
Property Tax Group 1, Inc.
3041 W. 126th Street
Carmel, IN 46032-8860

Re: Formal Complaint 04-FC-177; Alleged Violation of the Access to Public Records Act by the Marion County Treasurer's Office

Dear Mr. Johantges:

This is in response to your formal complaint alleging that the Marion County Treasurer's Office ("Treasurer") violated the Access to Public Records Act ("APRA") by imposing a \$1.00 fee for copies of tax bills. For the following reasons, I find that the Marion County Treasurer's Office violated the Access to Public Records Act.

BACKGROUND

You allege that the Marion County Treasurer's Office has imposed a \$1.00 fee for copying tax statements, and that the fee is excessive. You provided a copy of the public notice in which the \$1.00 copy fee was set by the Marion County Treasurer's Office. That notice states that "[d]ue to budgetary constraints, we can no longer provide printed tax statements at our cost. Effective Monday, September 13, 2004, there will be a charge of \$1.00 per bill for all tax statements printed (this includes prints of the computer screen)." You filed a formal complaint, which was received by this office on September 27, 2004. In that complaint, you also request priority status; however, as your complaint alleged none of the circumstances required by 62 IAC 1-1-3, your request for priority status was denied.

I forwarded a copy of your complaint to the Marion County Treasurer's Office. Mr. Gregory N. Jordan, Treasurer, responded. Although Mr. Jordan states that he forwarded a copy of the letter to you, I am enclosing a copy of his response for your reference.

Mr. Jordan states that the \$1.00 fee is not for copying, but rather is for producing duplicate tax statements. Mr. Jordan states that in this case, duplicate means a (tax) statement other than the original statement provided to the taxpayer who has the legal

liability for paying the tax. Mr. Jordan states that this is not a photocopy of an existing tax statement; rather, it is an additional tax bill printed on specialized paper that is run through the tax bill print application and printed on a laser printer.

ANALYSIS

Pursuant to the APRA, any person may inspect and copy the public records of a public agency unless those records are confidential or otherwise nondisclosable. IC 5-14-3-3(a). For non-state public agencies, the fiscal body of the public agency is required to set a fee schedule for copying records. IC 5-14-3-8(d). The fee may not exceed the actual cost of copying the records. IC 5-14-3-8(d). "Actual cost" means the cost of paper and the per-page cost for use of the copying equipment and does not include labor costs and overhead costs.

Mr. Jordan states that the duplicate tax bills are not photocopies of existing bills, and therefore, the \$1.00 fee is not a copy fee. Pursuant to Ind. Code §5-14-3-2, copying includes "transcribing by handwriting, photocopying, xerography, *duplicating machine*, duplicating electronically stored data onto a disk, drum, or any other medium of electronic data storage, and *reproducing by any other means*. *Emphasis added*. A copy, as defined by Merriam-Webster, is "an imitation, transcription, or reproduction of an original work." See MERRIAM-WEBSTER ONLINE (<http://www.m-w.com/>, last accessed October 26, 2004). The duplicate tax statements provided by the Treasurer are an exact replica of the original, and therefore, are copies subject to the APRA, regardless of whether those copies are made on a photocopier or, in this case, a laser printer.

It appears that the fee schedule for copies of duplicate tax statements was set by the Treasurer, not the city-county council. Pursuant to IC 36-1-2-6, fiscal body means the city-county council, for a consolidated city or county having a consolidated city. Therefore, the fee schedule set by the Treasurer does not comply with the requirements of IC 5-14-3-8(d). Notwithstanding that issue, there is no evidence that establishes that the \$1.00 fee is the actual cost of producing the copy of the statement. Mr. Jordan does state that the statement is printed on specialized paper, processed through a special print application, and is printed on a laser printer. However, it is not likely that the cost of a piece of paper plus the per-page cost of the use of the duplicating machine will approach \$1.00 per page.

CONCLUSION

For the foregoing reasons, I find that the Marion County Treasurer's Office violated the Access to Public Records Act by charging a \$1.00 copy fee for a duplicate tax statement.

Sincerely,

Karen Davis
Public Access Counselor

cc: Mr. Gregory N. Jordan, Treasurer