



# STATE OF INDIANA

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August 22, 2011

Mr. Marc L. Griffin  
821 N. Madison Avenue  
Greenwood, Indiana 46142-4128

*Re: Formal Complaint 11-FC-202; Alleged Violation of the Access to Public Records Act by the Posey County Assessor*

Dear Mr. Griffin:

This advisory opinion is in response to your formal complaint alleging the Posey County Assessor ("Assessor") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* The Assessor's response is enclosed for your reference. I have granted your request for priority status pursuant to 62 Ind. Admin. Code 1-1-3(3).

## BACKGROUND

In your complaint, you allege that you requested in writing from the Assessor information necessary to properly identify and determine the value of the gas or oil interest that is the subject of the property tax sale in Posey County, specifically the allocation of the applicable percentage interest among the owners of the oil or gas interest. In response to your request, you claim that the Assessor redacted the allocation of the applicable percentage interest among the owners of the oil or gas interest contrary to the requirement of I.C. § 6-1.1-35-9(g).

In response to your formal complaint, the Assessor advised that as I.C. § 6-1.1-35-9(g) has only recently become effective and that there is no case law, opinions, or other authority interpreting or construing the statute. The Assessor maintains that the "statute is inartfully written and ambiguous when read in the context of the remainder of Section 9." The issue that arose with the section's general prohibition against disclosure is that it undermined the ability to effectively measure the value of an oil and gas interest. As such, subsection (g) was passed to resolve the problem. The apparent purpose of the new exception was to lift the prohibition against disclosure as it related to oil and gas interests on the delinquent tax list; it was not intended for the release of information concerning earnings, income, profits, losses, and expenditures for any and all oil and gas interests.

Currently, the Property Schedule for Gas and Oil Well Assessment prescribed by the State makes the segregation of information for owners with delinquent taxes from that of owner with taxes current nearly impossible. As such, each time an assessing official makes a disclosure of earnings, income, profits, losses, expenditures, that individual is putting his or her job at risk pursuant to I.C. § 36-1.1-35-12. In redacting the information in response to the request, the Assessor, as charged by law, was protecting the information of those interest owners who are not delinquent on the delinquent tax list. A ruling that *all* of the information contained in the Schedule be made available will destroy any privacy provided under the law for those owners who have remain current on their tax obligations.

## 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 in person and the agency does not respond within 24 hours, the request is deemed denied. *See* I.C. § 5-14-3-9(a). 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. Here, the Assessor responded to your request within the timelines prescribed by the APRA.

The term “oil or gas interest” includes, but is not limited to royalties, overriding royalties, mineral rights, or working interest in any oil or gas located on or beneath the surface of land which lies within the State. *See* I.C. § 6-1.1-4-12.4. Oil and gas interests are subject to assessment and taxation as real property. *Id.* I.C. § 6-1.1-35-9 provides that:

- (a) All information that is related to earnings, income, profits, losses, or expenditures and that is:
  - (1) give 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 or 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 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), (d), or (g).

In 2011, the Indiana General Assembly amended I.C. § 6-1.1-35-9 to include subsection (g), an exception to information deemed confidential under the statute. I.C. § 6-1.1-35-9(g) provides that:

(g) Confidential information concerning an oil or gas interest, as described in I.C. 6-1.1-4-12.4, may be disclosed by an assessing official if the interest has been listed on the delinquent property tax list pursuant to IC 6-1.1-24-1 and is not otherwise removed from the property tax sale under IC 6-1.1-24. A person who establishes that the person may bid on oil or gas interest in the context of a property tax sale may request from an assessing official all information necessary to properly identify and determine the value of the gas or oil interest that is subject of the property tax sale. The information that may be disclosed includes the following:

- (1) Lease Information.
- (2) The type of property being sold.
- (3) The applicable percentage interest and the allocation of the applicable percentage interest among owners of the oil or gas interest (including the names and addresses of all owners).

The official shall make information covered by this subsection available for inspection and copying in accordance with IC 5-14-3. Confidential information that is disclosed under this subsection loses its confidential status. A person that is denied the right to inspect or copy information covered by this subsection may file a formal complaint with the public access counselor under the procedure prescribed by IC 5-14-5. However, a person is not required to file a complaint under IC 5-14-5 before filing an action under IC 5-14-3.

The Assessor does not dispute that the properties in question have been listed on the delinquent property tax list pursuant to I.C. § 6-1.1-24-1 and are not otherwise removed for sale pursuant to I.C. § 6-1.1-24; or that you have not established yourself as a person that may bid on an oil or gas interest in the context of a property sale.

In regards to the information that was redacted by the Assessor, specifically the allocation of the applicable percentage interest among owners of the oil or gas interest (including the names and addresses of all owners), the General Assembly expressed its intent regarding this specific class of information by listing it as an example of information that may be disclosed. While I do acknowledge and share in the privacy concerns addressed by the Assessor, I can not ignore the clear mandate of the General Assembly, who provided that this specific class of information, *without exception*, be made available and lose its confidential status under the circumstances provided in subsection (g). (emphasis added). As there has been no showing that the nature of your request does not meet the relevant qualifications of subsection (g), it is my opinion that the Assessor violated APRA when it redacted the information pursuant to your request.

#### CONCLUSION

For the foregoing reasons, it is my opinion that the Assessor violated the APRA in response to your records request.

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: Adam Farrar