



# STATE OF INDIANA

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March 3, 2009

Josh Bailey  
1420 West CR 280 South  
Greencastle, Indiana 46135

*Re: Formal Complaint 09-FC-36; Alleged Violation of the Access to Public Records Act by the Vermillion County Auditor*

Dear Mr. Bailey:

This advisory opinion is in response to your formal complaint alleging the Vermillion County Auditor ("Auditor") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by denying you access to an electronic map. It is my opinion the Auditor must provide the electronic map to you in email format if you insist on that format but the county fiscal body may establish a uniform fee based on the agency's cost of maintaining, upgrading and enhancing the map as well as providing the map in the format you have requested.

## BACKGROUND

You allege that on January 8, 2009 you telephoned the Auditor's office to request information contained in an electronic map the county maintains and publishes to a website. You requested all layers, specifically parcel information including owner mailing addresses and parcel numbers. You were directed to Mike Phelps and told he knows how to export and send the information by electronic mail ("email"). You allege that you sent several emails to Mr. Phelps over the course of two weeks and that he spoke to the county attorney as well as my office. You allege you still have not been provided with the information, and you were told you would have to wait until a fee could be established for the record. You filed the present complaint on February 2.

The Auditor responded to the complaint by email dated February 4 from Vermillion County Attorney Jon Spurr. Mr. Spurr contends Mr. Phelps had some problems with the request because in the past a person who requested the information had been directed to the company which maintained the software. Mr. Phelps contends you insisted he must send you the file and it must be sent by email. Mr. Phelps contends he does not know how to copy and send the file because of the size.

Mr. Phelps contends he contacted my office on January 14 and was counseled that waiting until the February 3 Board of Commissioners meeting (wherein the fee would be discussed) was not an unreasonable amount of time to provide the record. Mr. Spurr now reports the county will not charge you for the data. Mr. Spurr indicates, though, that the problem of how to email the record remains. Mr. Spurr contends that at the February 3 Commissioners meeting, a representative of the software contractor said under normal circumstances the contractor would produce the copy to respond to a request. Mr. Spurr inquires whether the county is required to email the file when normally the contractor would do so.

## ANALYSIS

The public policy of the APRA states, "[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." I.C. § 5-14-3-1. The Auditor is clearly a public agency for the purposes of the APRA. I.C. § 5-14-3-2(m). Accordingly, any person has the right to inspect and copy the public records of the Auditor during regular business hours unless the public records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. I.C. § 5-14-3-3(a).

The issue here is not that the Auditor has denied you access to the record. Instead, the question is how the Auditor is required to deliver the record to you. The Auditor does not contend the record is one which may be withheld from disclosure. The map is a public record as defined in the APRA (*See* I.C. § 5-14-3-2(n)), and as such must be disclosed absent a specific exemption.

The APRA provides the following regarding requests for records in a specific medium:

Except as provided in subsection (e), 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. This subsection does not apply to an electronic map.  
I.C. § 5-14-3-3(d).

Regarding electronic maps, the APRA provides the following:

Except as provided in subsection (k), a public agency may charge a fee, uniform to all purchasers, for providing an electronic map that is based upon a reasonable percentage of the agency's direct cost of maintaining, upgrading, and enhancing the electronic map and for the direct cost of supplying the electronic map in the form requested by the purchaser. If the

public agency is within a political subdivision having a fiscal body, the fee is subject to the approval of the fiscal body of the political subdivision. I.C. § 5-14-3-8(j).

The former, the general provision, requires an agency to make reasonable efforts to provide a record in the format requested. I.C. § 5-14-3-3(d). So presumably if an agency cannot produce the record as requested, the agency could substitute an alternative medium for providing the record. The provision related to electronic maps, though, allows an agency to charge a uniform fee that is based upon the cost of the agency's cost of maintaining, upgrading and enhancing the map and for supplying the electronic map in the form requested by the purchaser. I.C. § 5-14-3-8(j). As I read this provision, the agency is required to provide the map in the format requested but may charge a fee that includes, among other things, the direct cost of supplying the map in that format.

Here, it is my understanding the county has indicated it will try not to charge you for the record. But the county is having trouble providing the map in email form. As I understand the situation, if you would accept the map via CDs or another medium on which the county can provide it, the county would not have to charge you a fee for that. Certainly if you are willing to accept the map in that format, the county would meet its obligation under the statute by providing the map in such a format.

If you are not willing to accept the map in another format, though, and insist that you must receive it by email, it is my opinion that I.C. § 5-14-3-8(j) requires the county to provide it in the format you have requested. I would imagine the county will need to work with its contractor to provide the map in email format, and I would imagine that will come at some expense. Pursuant to I.C. § 5-14-3-8(j), the county fiscal body may establish a fee for supplying the map in the format requested, and that fee may include the cost of supplying the record in the format requested. In my opinion it would not be unreasonable for the county to get a cost estimate for providing the record as you have requested and then establish, at the next regular meeting, the fee for supplying the map. Further, it would be reasonable for the county to ask the contractor to provide the record to you on the county's behalf.

#### CONCLUSION

For the foregoing reasons, it is my opinion the Auditor must provide the electronic map to you in email format if you insist on that format but the county fiscal body may establish a uniform fee for doing so.

Best regards,



Heather Willis Neal  
Public Access Counselor

Cc: Jon Spurr