

October 12, 2004

Mr. Marc L. Griffin  
Attorney at Law  
821 N. Madison Ave.  
Greenwood, IN 46142-4128

*Re: Formal Complaint 04-FC-162; Alleged Violation of the Access to Public Records Act by the Scott County Auditor's Office*

Dear Mr. Griffin:

This is in response to the formal complaint you filed on behalf of your client, Greg Shoulders. That formal complaint alleges that the Scott County Auditor ("Auditor") violated the Access to Public Records Act by prohibiting Mr. Shoulders from making copies of public records with a digital camera. For the following reasons, I find that the Scott County Auditor's prohibition against making copies of public records with a digital camera violated the Access to Public Records Act.

#### BACKGROUND

On August 27, 2004, Mr. Shoulders went to the Scott County Auditor's Office to make copies of plat maps with his digital camera. Mr. Shoulders was advised by the Auditor's Office that he could not make digital photographs of the plat maps. He was advised that he could make copies of the plat maps with his pen and paper, but could not make copies "in any way the County does not offer."

You filed a formal complaint on behalf of Mr. Shoulders. That complaint was received by this office on September 10, 2004. I forwarded a copy of your complaint to the Auditor's Office, and Ms. Iva Gasaway, Scott County Auditor, responded. Ms. Gasaway states that the Auditor's Office sells copies of the maps to offset the cost of purchasing and updating the maps. Ms. Gasaway states that Mr. Shoulders was not denied access to the maps, and states that he is

welcome to inspect the maps and make notes, or that the Auditor will copy them for him with the Auditor's map duplicator, for a fee.

## ANALYSIS

The Scott County Auditor's Office is a public agency for purposes of the Access to Public Records Act ("APRA"). I.C. §5-14-3-2. Under the APRA, any person may inspect and copy the public records of a public agency during the regular business hours of the agency, unless that record is confidential or otherwise nondisclosable pursuant to I.C. §5-14-3-4. I.C. §5-14-3-3(a). The agency must either provide the requested copies to the person making the request, or allow the person to make copies on the agency's equipment or on the person's own equipment. I.C. §5-14-3-3(b). "The plain language of the statute provides that the party making the request is entitled to obtain copies of the responsive records or to inspect the responsive records and make copies as desired upon that inspection." *Opinion of the Public Access Counselor 04-FC-43*. Furthermore, a public agency cannot deny or interfere with the exercise of the right to inspect and copy the public records of a public agency. I.C. §5-14-3-3(b).

This office has not previously addressed the issue of whether an agency may dictate the medium with which a copy must be made. According to the APRA, "copy" includes transcribing by handwriting, photocopying, xerography, duplicating machine, duplicating electronically stored data onto a disk, tape, drum, or any other medium of electronic data storage, and *reproducing by any other means.*" I.C. §5-14-3-2. (Emphasis added.) Under the plain language of the APRA, digital photographs are included in the definition of "copy."

In *Opinion of the Public Access Counselor 04-FC-10*, this office stated that "(t)he (agency) may, for example, require that records be inspected in front of court personnel, require that (agency) personnel make the copies rather than the requestor, or require that the copies be made on the (agency's) equipment rather than the requestor's equipment." However, the context in which that statement was made indicates that those types of restrictions are limited to situations governed by I.C. §5-14-3-7, which states, in pertinent part, that a public agency "shall protect the public records from loss, alteration, mutilation, or destruction." Ms. Gasaway does not allege that taking digital photographs of the plat maps will cause them to be harmed, altered, mutilated, or destroyed, nor is there any evidence that such damage will result from being photographed.

The Illinois Appellate Court addressed a similar situation in *People ex rel. Gibson v. Peller*, 181 N.E.2d 376 (Ill. App. 1962). In that case, plaintiffs were refused the right to make a photograph reproduction of the Board of Education's financial records. Plaintiff asserted the right to photograph the records under Illinois common law as well as the State Records Act. That court held that inasmuch as the Board of Education was an agency of the state government, and its members public officers of the state, the State Records Act permitted photographs of the records. That court also held that in Illinois, there exists at common law a right to reproduce, copy, and photograph public records as an incident to the common law right to inspect and use public records. "Good public policy requires liberality in the right to examine records." *Id.*

As in the present case, the defendants in *People* alleged that the record requestors had the right to look, examine, and inspect with the naked eye the public records and copy them by hand, but had no right to photograph the records. That court dismissed the defendant's claims that the public had no right to photograph the records, stating:

"This argument cannot be sustained by logic or common knowledge. Modern photography is accurate, harmless, noiseless, and time saving. It does nothing more than capture that which is seen with the naked eye. Neither defendants nor the public can be harmed by the reproduction of the records exactly as they exist. The fact that more modern methods of copying are devised should not lessen the basic right given under the common law."

Reproducing a public record with a digital camera is a form of copying that ensures an exact duplicate of the record and does not damage the original. Although the Auditor's prohibition against making digital photographs appears to be motivated by a desire to make updating those maps financial feasible, that prohibition is a denial of and an interference with Mr. Shoulders' right to produce a copy of those records on his own equipment. Also, such a motive, while understandable, is not included within the exceptions listed in I.C. §5-14-3-4.

#### CONCLUSION

For the foregoing reasons, I find that the Scott County Auditor's prohibition against using digital cameras to reproduce a copy of a public record, when such use will not damage the original record, is a violation of the Access to Public Records Act.

Sincerely,

Karen Davis  
Public Access Counselor

cc: Ms. Iva Gasaway