

October 16, 2006

Sent Via Facsimile

Marc L. Griffin
821 N. Madison Avenue
Greenwood, IN 46142-4126

Re: Formal Complaint 06-FC-161; Alleged Violation of the Access to Public Records Act by the Boone County Assessor

Dear Mr. Griffin:

This is in response to your formal complaint alleging that Boone County Assessor ("Assessor") violated the Access to Public Records Act by refusing to allow the public to inspect the property record cards maintained by the Assessor in electronic format, unless the cards were printed out on paper and the requester paid a fee.

BACKGROUND

You allege that your client, Greg Shoulders, visited the Assessor's Office on September 14, 2006. You allege on behalf of your client that Mr. Shoulders was told that the property record cards on file with the Assessor existed only in electronic format, and that Mr. Shoulders could not inspect the property record cards unless he first paid for them to be printed onto paper. No public access computer terminal exists in the Assessor's Office.

After sending a copy of the complaint to the Assessor, I received the enclosed letter from Mandi Wilson, Boone County Assessor. She confirmed that she was out of the office on September 14 when Mr. Shoulders visited the office. She did receive a call from the staff member assisting Mr. Shoulders. Mr. Shoulders had a list of tax sale properties and wanted to inspect property record cards for all 113 parcels. Her staff informed him that the office would not be able to print out all 113 property record cards at once, but would be able to do a few immediately, and print the remainder over the next couple of days as the workload permitted.

The Assessor also confirmed that her staff told Mr. Shoulders that in order for him to view the cards, the Assessor would have to print them out and there would be a small fee of \$.20 per card. The staff also explained that although the Assessor lacked a public terminal for viewing the property records cards online, the Auditor's Office has public access terminals. Mr. Shoulders was given the option of viewing the property record cards in the Auditor's Office and specifying to the Assessor each property card that Mr. Shoulders wished to receive a copy of. Ms. Wilson denies that the Assessor was refusing to cooperate or provide records.

ANALYSIS

Any person may inspect and copy the public records of any public agency, except as provided in section 4 of the Access to Public Records Act ("APRA"). Ind. Code 5-14-3-3(a). A public agency may not deny or interfere with the exercise of the right stated in subsection (a). The public agency shall 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. IC 5-14-3-3(b). 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. IC 5-14-3-3(d).

There are no specific timeframe within which a public agency is required to produce records. Rather, the public agency should produce records within a reasonable time, regulating any material interference with the regular discharge of the functions or duties of the public agency or public employees. IC 5-14-3-7(a). However, the latter provision on material interference may not operate to deny to any person the right to inspect and copy a public record. IC 5-14-3-7(c).

Except as provided in section 8 of Ind. Code 5-14-3, a public agency may not charge any fee under the APRA to inspect a public record or to search for, examine, or review a record to determine whether the record may be disclosed. IC 5-14-3-8(b). Notwithstanding section 8(b), a public agency shall collect any certification, copying, facsimile machine transmission, or search fee that is specified by statute or is ordered by a court. IC 5-14-3-8(f).

There is no issue presented in your complaint regarding whether the property record card is disclosable. Instead, you have complained that the Assessor has no means of allowing the public to inspect an electronically stored record, and therefore you have been denied electronic access to the Assessor's records. You also complain that the Assessor could not charge a fee to inspect the record.

The Assessor counters that while her office does not maintain a public access terminal, the staff would be able to accommodate the printing of property record cards for viewing over several days because of the number of parcels involved, and would allow Mr. Shoulders to view the printed materials and select the parcels for which he wished to receive copies. Alternatively, Mr. Shoulders could inspect the records on the public access terminal of the Auditor and select the specific parcels that the Assessor would provide copies for. The Assessor also said that her

staff told Mr. Shoulders that in order for him to view the cards from the Assessor's Office, the Assessor would have to print them out and there would be a small fee of \$.20 per card.

It is my opinion that the Assessor did not deny Mr. Shoulders the records stored in an electronic database and requested to be printed out on paper. It is apparent that the Assessor is able to print records from the database onto paper. I find no authority in the statute or in the APRA that would require the Assessor to maintain a public access terminal, although such a terminal would make for smoother inspection of records. In addition, it was not a denial of access for the Assessor to print all 113 parcels onto paper for Mr. Shoulder's inspection over several days rather than print all 113 parcels at once. This production time appears reasonable. In fact, according to the Assessor, the staff was willing to print some property record cards, but not all, for immediate inspection.

However, I find no authority within the APRA or any other statute that allows the Assessor to assess a fee to search for or to allow the public to inspect the property record cards. The APRA specifically states that a public agency may not charge a fee to inspect a record or to search for a record. Therefore, the Assessor's Office violated the Access to Public Records Act when the staff told Mr. Shoulders that he would be assessed a fee of \$.20 per card to inspect the property record cards.

CONCLUSION

For the foregoing reasons, I find that the Assessor may not charge a fee to allow inspection of property record cards that are stored in an electronic database.

Sincerely,

Karen Davis
Public Access Counselor

cc: Mandi Wilson