



STATE OF INDIANA

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August 23, 2011

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

Re: Formal Complaint 11-FC-204; Alleged Violation of the Access to Public Records Act by the Gibson County Assessor

Dear Mr. Griffin:

This advisory opinion is in response to your formal complaint alleging the Gibson County Assessor ("Assessor") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* My office sent a copy of your complaint to the Assessor, but as of today we have not received a response. 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 all pages from the most currently filed Form G & O-1 ("Form") for interest in the Glen Hadfield Lease. You claim that you were denied access to 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 Gibson County, specifically:

- (1) The average daily production as indicated on Page 1 of the Form.
- (2) The allocation of the applicable percentage interest among the owners of the oil or gas interested as indicated on Page 2 of the Form.
- (3) The Form for all leases that are a part of the Mackey West Unit, which are needed to determine the value of the oil interest that is subject of the property tax sale due to the allocation in lieu of actual production from the Glen Hadfield Lease.

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. From the information that is before me, 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 included 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.

Without the benefit of a response from the Assessor, it is unclear to me why your request was redacted and/or denied. Under the APRA, a public agency that withholds a public record bears the burden of proof to show that the record is exempt. I.C. §§ 5-14-3-1, 5-14-3-9(f) and (g). Exceptions to disclosure are narrowly construed. I.C. § 5-14-3-1. Because the Assessor has not provided a justification for withholding the records at issue here, it is my opinion that the Assessor has failed to sustain its burden.

If the Assessor cannot justify withholding the records under the APRA, I encourage the Assessor to release the records to you as soon as possible. To the extent the Assessor persists in its denial of access following the issuance of an advisory opinion from this office and you believe the Assessor to be in violation of the APRA, I leave you to your remedies before a court pursuant to Ind. Code § 5-14-3-9(e).

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 written in a cursive style with a large initial "J" and a distinct "Hoage" at the end.

Joseph B. Hoage
Public Access Counselor

cc: Gibson County Assessor