



STATE OF INDIANA

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April 9, 2015

Ms. Sharon LeVeque
P.O. Box 343
Bremen, Indiana 46506

Re: Formal Complaint 15-FC-79 & 52 (Consolidated); Alleged Violation to the Access to Public Records Act by the Penn Township Assessor and the St. Joseph County Assessor

Dear Ms. LeVeque:

This advisory opinion is in response to your formal complaint alleging Penn Township Assessor and St. Joseph County Assessor ("Assessor") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et. seq.* The Assessor has responded to your complaint via Mr. Frank Agostino, Esq. His response is enclosed for your review. Pursuant to Ind. Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on February 19, 2015.

BACKGROUND

Your complaint dated February 11, 2015 alleges Penn Township and St. Joseph County Assessors violated the Access to Public Records Act by failing to acknowledge your public records request. You requested a compilation of property record cards for the following classes of properties in Penn Township and St. Joseph County: 510, 520, 530, 540, 401 (the codes assigned to particular types of properties) or income producing properties.

You state the St. Joseph County website provides inadequate records because neighborhood codes for specialized properties cannot be sorted and categorized. You are requesting the assessor provide you with the electronic version of the property record cards, the marker rents, the median gross rent multiplier, and the properties used to develop the "median gross rent multiplier." This information is critical to you, as it is part of the tax appeal process wherein you present evidence disputing the assessment.

The Penn Township Assessor has responded by stating the property record cards are already available on the assessor's website, and the assessor is not required to modify the

website access in order to meet parameters which are not already accessible. Furthermore, the assessor states that a gross rent multiplier worksheet has been provided, but the rental information provided by the landlord is confidential and therefore cannot be disclosed.

ANALYSIS

The Access to Public Records Act provides that “Any person may inspect and copy the records of any public agency during the regular business hours of that agency, except as provided in section 4 of this chapter.” Ind. Code § 5-14-3-3(a). Transparency of public agencies allows for accountability to the public. However, there are limits to the requirements a public agency must meet.

A public agency is not required to create a list of names and addresses nor publish and disseminate such information. The agency is required to allow a person to inspect such a list, only if it is already created. Ind. Code § 5-14-3-3(f). Public agencies are not required to reprogram a computer system to provide enhanced access. Ind. Code § 5-14-3-6(d)(1).

To the extent it does not disclose confidential financial information, you are entitled to inspect and/or copy the portions of the record which do not contain rental income. Your request seeks rental information -because part this information is related to landlord income and is given to an assessing official, it is considered confidential according to Ind. Code § 6-1.1-35-9. However, you seek other information which can be separated and disclosed.

The information the Assessor is required to disclose is available on the Assessor’s website, though it is not able to be sorted to meet your requirements, i.e., by classification code number. After discussion with the Assessor’s attorney, it cannot be sorted by the Assessor either.¹ The data is uploaded to the online portal as the only record which exists. The property cards are not stored by code and cannot be sorted by the program to pull out the individual addresses within that particular code. The Assessor’s website does not modify in order to provide the categorical information you seek. Furthermore, the Public Access Counselor has previously determined a “public agency is not required to compile or create a record to satisfy a person’s request for information. Rather, the APRA requires that a public agency make available its current records.” See *Opinion of the Public Access Counselor 06-FC-196*

CONCLUSION

¹ The purpose of your information request is to use the data to buttress a subjective appeal of the assessed value. At the Property Tax Board of Appeals Hearing (“PTABOA”), both parties present to the PTABOA information supplementing their arguments. You suggest the Assessing Official may have access to the sorted data and they present it to the PTABOA. If this is the case, then you should have access to it. Counsel appears to make the suggestion it would be considered deliberative material, however, if it is presented to a quasi-adjudicative body for a determination, it stands to reason both parties should be privy to the entirety of the information presented to the tribunal.

Based on the foregoing, the Penn Township Assessor and the St. Joseph County Assessor are not in violation of the Access to Public Records Act.

Best regards,

A handwritten signature in black ink, appearing to be 'L. H. Britt', written in a cursive style.

Luke H. Britt
Public Access Counselor

Cc: Mr. Frank Augustino, Esq.