OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

March 27, 2015

Via electronic mail
Mr. Steve Vertin
Vertin Valuation Services Corporation
203 North LaSalle Street, Suite 2100
Chicago, Illinois 60601
[redacted]

RE: FOIA Request for Review – 2015 PAC 34157

Dear Mr. Vertin:

The Public Access Bureau received your Request for Review, pursuant to section 9.5(a) of the Freedom of Information Act (FOIA) (5 ILCS 140/9.5(a) (West 2012), as amended by Public Act 98-1129, effective December 3, 2014) concerning a FOIA request that you submitted to the Illinois Department of Revenue (Department). For the reasons explained below, the Request for Review process is not available in this instance because you requested records for a commercial purpose.

Based on the information you provided to this office, on April 5, 2014, you submitted a FOIA request to the Department seeking all PTAX-203 Illinois Real Estate Transfer Declaration forms for every county in Illinois. You indicated that your request had a commercial purpose.[1] Your Request for Review stated that because you did not receive the records you were seeking, you submitted another request on or about February 18, 2015, seeking PTAX-203 information for commercial industrial properties in certain counties. The Department responded by asserting that those records are exempt from disclosure pursuant to section 7(1)(f) of FOIA (5 ILCS 140/7(1)(f) (West 2013 Supp.), as amended by Public Act 98-695, effective December 3, 2014). Alternatively, the Department asserted that compliance with your request would be unduly burdensome pursuant to section 3(g) of FOIA (5 ILCS 140/3(g) (West 2012), as amended by Public Act 98-1129, effective December 3, 2014), and invited you to narrow your request, which it characterized as having a commercial purpose, to manageable proportions. Your Request for Review contends that the records you requested are subject to disclosure by the

[1]Illinois Department of Revenue Freedom of Information Act Request form signed by Stephan J. Vertin (April 5, 2014).

Department, and questions whether your FOIA request is properly classified as one with a "commercial purpose."

Section 9.5(a) of FOIA allows a person whose FOIA request is denied to seek review of that denial with the Public Access Counselor. Section 9.5(b) of FOIA (5 ILCS 140/9.5(b) (West 2012), as amended by Public Act 98-1129, effective December 3, 2014), however, creates an exception by providing that a "person whose request to inspect or copy a public record is made for a commercial purpose as defined in subsection (c-10) of Section 2 of this Act may not file a request for review with the Public Access Counselor[ ]" except for "the limited purpose of reviewing whether the public body properly determined that the request was made for a commercial purpose."

FOIA defines "commercial purpose as:

> the use of any part of a public record or records, or ***information derived from public records, in any form for sale***, resale, or solicitation or advertisement for sales or services. For purposes of this definition, requests made by news media and non-profit, scientific, or academic organizations shall not be considered to be made for a "commercial purpose" when the ***principal purpose of the request*** is (i) to access and disseminate information concerning news and current or passing events, (ii) for articles of opinion or features of interest to the public, or (iii) for the purpose of academic, scientific, or public research or education. (Emphasis added.) 5 ILCS 140/2(c-10) (West 2012), as amended by Public Act 98-695, effective December 3, 2014.

PTAX-203 forms contain detailed information concerning properties that are the subject of real estate transactions for the purpose of collecting transfer taxes based on the sales price. Your Request for Review states that you are a commercial appraiser and that your company uses "data on [PTAX-203] forms to produce the most credible commercial industrial real estate appraisals possible. * * * We are seeking this data to improve our product, promote employment and for the good of our state to be used for perfectly legitimate and legal purposes."[2] Specifically, you stated that you are seeking the information to "develop a multiple listing service (MLS) system" of appraised properties, adding that there is a "modest membership costs for our Illinois MLS system."[3] Your company's website indicates that the membership cost for access to the multiple listing service system for properties in the state of Indiana is $69.99 per

[2]Letter from Steve Vertin to Sarah Pratt, Public Access Counselor, Office of the Attorney General (March 14, 2015), at 2.

[3] Letter from Steve Vertin to Sarah Pratt, Public Access Counselor, Office of the Attorney General (March 14, 2015), at 2.

month, or $719.88 per year.[4] However, you appear to assert that you fall under the exception to the definition of commercial purpose because your company "will be using the end results of these data[ ] or the combined statistical analysis in our commercial industrial sales data" to disseminate news on a blog on the internet about the commercial industrial real estate market.[5]

Based on the information that you provided and a review of the information on your website, it is clear that you are seeking information derived from data in the requested PTAX-203 forms to develop a system listing appraised properties for which access will be limited to paying members. Because you intend to sell access to this information derived from the public records you are seeking from the Department, your request falls squarely within the definition of a request made for a "commercial purpose" in section 2(c-10) of FOIA. To the extent that you may also use data to disseminate information to the public on the internet, that does not appear to be the "principal purpose" of your request, therefore your request would still be made for a "commercial purpose".

Because your FOIA request has a commercial purpose, this office is unable to review your allegation that the Department improperly denied your FOIA request. Please note that you have the option of filing suit for injunctive or declaratory relief pursuant to section 11 of FOIA (5 ILCS 140/11 (West 2012)).

If you have any questions, please contact me at (312) 814-6756. This letter shall serve to close this matter.

Very truly yours,

[redacted]

STEVE SILVERMAN
Assistant Bureau Chief
Public Access Bureau

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cc: *Via electronic mail*
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REV.FOIA@illinois.gov

[4]Vertin Valuation Services, http://vertinvaluation.com/mls_app (last visited March 25, 2015).

[5]Letter from Steve Vertin to Sarah Pratt, Public Access Counselor, Office of the Attorney General (March 14, 2015), at 2.