

STATE OF NEW MEXICO
COUNTY OF UNION
EIGHTH JUDICIAL DISTRICT COURT
NO. 2011 - 5 CV

FILED IN THE OFFICE
OF THE CLERK OF THE COURT
OF THE COUNTY OF UNION

11 JAN 18 PM 3:20

BERNARD STRUCK
CLERK OF THE
DISTRICT COURT

Levon Sink,

Plaintiff,

vs.

Board of County Commissioners of Union
County, Consisting of Justin Bennett, Van
Robertson and Walter Hall. Union County
Assessor's Office, Frankie Aragon, Assessor,
Lewis Trujillo, Deputy Assessor and former
Union County Assessor,

Defendants.

**PETITION FOR WRIT OF MANDAMUS
AND JUDGMENT FOR COSTS, FEES AND DAMAGES**

For his Complaint Plaintiff respectfully SHOWS THE COURT:

1

Plaintiff is a resident of Union County, New Mexico.

2

Frankie Aragon is currently the Assessor for Union County, New Mexico having been recently elected and serving in that office since January 3, 2011. At all other times material to this Complaint Frankie Aragon has been a Deputy County Assessor for Union County. Lewis Trujillo is currently a Deputy County Assessor for Union County and all other times material to this Complaint was the Assessor for Union County, New Mexico. Plaintiff is employed by Union County as E911 Project Manager. At all times material to this Complaint the Assessor for Union County has been the custodian of records maintained in the Assessor's office and in particular digital GIS ownership data

on parcels of land in Union County, New Mexico (hereinafter requested data).

3

Digital GIS ownership data on parcels of land in Union County, New Mexico maintained by the County Assessor's office is subject to inspection under the Inspection of Public Records Act Section 14-2-1 through 14-2-12 NMSA, 1978. (Hereinafter IPRA)

4

The requested data is not protected from disclosure under any exception set out in 14-2-1 NMSA, 1978.

5

The requested data is a public record consisting of data inserted in a computer database available for copying and production in an electronic form pursuant to the New Mexico Public Records Act, Section 14-3-18 E and G NMSA, 1978 (2010 Supp.)

6

By letter January 12, 2009 Plaintiff made a request consistent with the provisions of the IPRA for digital parcel ownership information from the Union County Assessor's office. A true copy of said request is attached hereto as Exhibit "A" and incorporated herein for all purposes.

7

No Notice was provided to Plaintiff pursuant to Section 14-2-10 NMSA, 1978 in response to his IPRA request January 12, 2009. No information was provided to Plaintiff within the 15 day period mandated pursuant to Section 14-2-11 NMSA, 1978. Despite several subsequent verbal requests by Plaintiff for the information from the Union County Assessor said information has not been provided as of the date of this Complaint.

By letter dated November 30, 2010 Plaintiff asked for specific digital GIS data from the Union County Assessor's office. A true copy of the request submitted to the custodian of records of the Union County Assessor's office November 30, 2010 is attached hereto as Exhibit "B" and incorporated herein by reference for all purposes.

Once again no notice under Section 14-2-10 was provided to Plaintiff from the Assessor's office and the public information requested on September 30, 2010 has not been provided.

Plaintiff requires the requested information in electronic form to effectively and efficiently perform his job responsibilities as E911 Project Manager for Union County. Plaintiff has always been and is willing to pay a reasonable fee for any materials required to comply with the request, for making an electric copy of the computer database and for personnel time to research and retrieve the electronic record together with any other reasonable cost or fee in compliance with law.

Section 14-3-18 E provides in part:

A County... that has inserted data into a computer database shall authorize an electronic copy to be made of the computer database of a public record on a currently available electronic medium for a person if the person agrees to pay a reasonable fee based upon the cost of:

(1) Materials; (2) making an electronic copy of the computer database; and (3) personnel time to research and retrieve the electronic record.

As Plaintiff is informed and believes the County Commission for Union County is willing to comply as required by the Statute and is willing to authorize, as mandated by the Statute, the provision of the electronic copy from the Assessor's office.

12

Provision of the requested records are mandated by the Inspection of Public Records Act. Provision of such Public Records is a ministerial act on the part of the Union County Assessor.

13

The appropriate remedy to compel delivery of the requested information is a writ of mandamus issued to the County Commissioners for Union County and the County Assessor for Union County which writ should be a peremptory writ. A peremptory writ in the form attached to this Petition as Exhibit "C" should issue compelling, copying and production of the requested information.

14

The mandatory duty of the Union County Assessor to copy the requested electronic file and deliver same to Plaintiff is clear from the Statute and Plaintiff is entitled to a peremptory writ requiring the County Assessor to copy such information and provide it to the Plaintiff.

15

The Plaintiff has no plain, speedy or adequate remedy at law and there is no right of appeal provided by law from a failure on the part of the County Assessor to provide the requested information or to reply to Plaintiff's request under the inspection of Public Records Act.

16

Plaintiff has been required to retain an attorney to pursue this action to compel production of the requested information and is entitled to recover costs and reasonable attorney's fees from the Defendants. Section 14-2-12 D NMSA, 1978. The Plaintiff is entitled to damages in the amount of

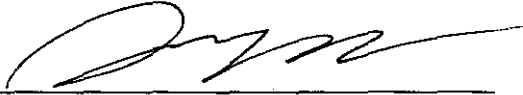
\$100.00 per day from and after January 27, 2009 for each day the Union County Assessor, the custodian of the records requested, has failed and refused to provide the records. Section 14-2-11 C NMSA, 1978.

WHEREFORE THE PLAINTIFF RESPECTFULLY PRAYS this Court issue its Peremptory Writ substantially in the form attached to this Petition as Exhibit "C" compelling production of the records requested in Plaintiff's inspection of public records request January 12, 2009 and again November 30, 2010.

Plaintiff further requests this Court issued Judgment against the Defendants, Board of County Commissioners and Frankie Aragon as Assessor for Union County for Plaintiff's costs of suit, reasonable attorney's fees and for damages in the amount of \$100.00 per day from and after January 27, 2009 or as can be proven at subsequent hearing. Plaintiff prays for such other and further relief as the Court deems appropriate.

ALSUP LAW OFFICE

By



Gary D. Alsup
Attorney for Plaintiff
P.O. Box 518
Clayton, New Mexico 88415
(575) 374-2526 / Fax: (575) 374-2759
E-mail: alsuplaw@alsuplawoffice.com



Levon Sink, Plaintiff

STATE OF NEW MEXICO,

COUNTY OF UNION, SS

LEVON SINK, being first duly sworn, on oath deposes and says that he has read the foregoing Petition, well knows the matters contained therein and that such matters are true and correct to the best of his knowledge and belief.



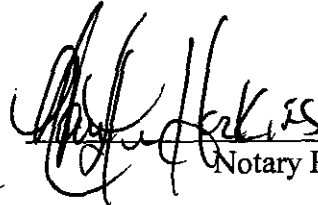
Levon Sink

SUBSCRIBED AND SWORN TO before me this 13th day of January, 2011.

(SEAL)

My commission expires:

Aug 4, 2012



Notary Public



Union County E911 &
GIS Mapping Dept.
200 Court Street
Clayton N.M. 88415
575-374-6075

To: Louis Trujillo
Subject: Request for Public Data
January 12, 2009

Louis,

I would like to request a updated Cad ownership file form the Assessor's office. This would be your ownership file containing the group layer which consists of the Annotation, point, polyline, polygon, and MultiPatch layers. Thank you for your attention to this matter.

Respectfully,

Levon Sink
E911 Project Manager
Union County
gis@plateautel.net

EXHIBIT

A



Union County E911 &
GIS Mapping Dept.
P.O. Box 430
Clayton N.M. 88415
575-374-6075

To: Custodian of Records
Union County Assessor's office
Subject: request for public information
November 30, 2010

Dear Union County Assessor,

I am requesting digital GIS data from your office to assist me in doing my job. What I am requesting is your ownership data. This should include all municipalities and the rural county as well. I would like all annotation included to show owner names, subdivisions and lot and block numbers. Thank you for your attention to this matter.

Respectfully,

Levon Sink
E911 Project Manager
Union County
gis@plateautel.net

EXHIBIT

B

STATE OF NEW MEXICO
COUNTY OF UNION
EIGHTH JUDICIAL DISTRICT COURT
NO. 2011 - ____ CV

Levon Sink,

Plaintiff,

vs.

Board of County Commissioners of Union
County, Consisting of Justin Bennett, Van
Robertson and Walter Hall. Union County
Assessor's Office, Frankie Aragon, Assessor,
Lewis Trujillo, Deputy Assessor and former
Union County Assessor,

Defendants.

ORDER GRANTING PEREMPTORY WRIT OF MANDAMUS

Based upon the allegations contained in the Petition for Writ of Mandamus this Writ is issued.

1

Plaintiff Levon Sink is a resident of Union County, New Mexico and is employed by Union County as the E911 Project Manager.

2

Frankie Aragon is currently the Assessor for Union County, New Mexico having taken that office January 3, 2011. Lewis Trujillo is currently a Deputy County Assessor for Union County and was the Assessor for Union County during the years 2009 and 2010. Frankie Aragon was the Deputy Assessor for Union County in the years 2009 and 2010. At all times material to this Complaint the Assessor for Union County has been the custodian for records maintained in the Assessor's office and in particular Digital GIS ownership data on parcels of land in Union County, New Mexico.

EXHIBIT

C

3

On January 12, 2009 and once again on November 30, 2010 the Plaintiff made a written request to the Union County Assessor for digital GIS ownership data on parcels of land in Union County, New Mexico maintained by the County Assessor's office.

4

Digital GIS ownership data maintained by the Union County Assessor's office is subject to inspection under the Inspection of Public Records Act. Said data is not protected from disclosure under any exceptions set out in the Inspection of Public Records Act.

5

Pursuant to Section 14-3-18 E & G NMSA, 1978 of the New Mexico Public Records Act the requested data is a public record consisting of data inserted in a computer database available for copying and production in an electronic form.

6

Following receipt of the request for public records sent by Plaintiff to the office of the Union County Assessor in January 2009 and November 2010 no responsive notice or provision of information whatsoever has been made by the County Assessor's office.

7

The Plaintiff is willing to pay a reasonable fee for any materials required to comply with the request and for making an electric copy of the computer database and for personnel time to research and retrieve the electronic record together with any other reasonable cost or fee in compliance with law. The Board of County Commissioners for Union County is required by Statute to authorize an electric copy to be made of the computer database of a public record on a currently available electronic medium for a person requesting that information so long as that

person agrees to pay a reasonable fee based upon the cost of materials; making an electronic copy of the computer database; and personnel time to search and retrieve the electronic record.

8

Provision by the Union County Assessor's office of the requested records are mandated by the Inspection of Public Records Act and provision of such public records is a ministerial act. The obligation to copy and produce the electronic records requested by the Plaintiff in this case is clear. Said information was due by law within 15 days of the request. Compliance is long overdue.

9

Plaintiff is entitled to a peremptory writ requiring the Union County Assessor to copy the digital GIS data as specified in the Plaintiff's request in January 2009 and November 2010.

10

The Plaintiff has no plain, speedy or adequate remedy at law in connection with the Defendants' failure to comply with the Inspection of Public Records Act in this case and there is no right of appeal provided by law for a failure on the part of the Union County Assessor to provide the requested information.

11

This Court retains jurisdiction over this matter for consideration and entry of Judgment for Plaintiff's costs, reasonable attorney's fees and damages.

12

Showing having been made that under the facts before this Court and the Inspection of Public Records Act and the Public Records Act for the State of New Mexico this peremptory writ under Section 44-27 is granted as the right to the performance of the requested Act (copying and

delivering the digital GIS data as requested by Plaintiff) is clear, and it is apparent that no valid excuse can be given for not performing said Act, this peremptory writ is granted.

13

Frankie Aragon, the Union County Assessor, is ordered to copy the electronic GIS data files maintained by the Union County Assessor's office and in particular the information requested by the Plaintiff by writing January 12, 2009 and November 30, 2010, in a format accessible and useable by the Plaintiff and to deliver said copy to Plaintiff no later than February 28, 2011. The Board of County Commissioners are ordered to authorize copying and delivering of said information to the Plaintiff.

14

The Board of County Commissioners and the Union County Assessor are further commanded to make return of this writ before this Court on or before March 3, 2011 stating what has been done in compliance with this writ.

DATED this _____ day of _____, 2011.

District Court Judge

RESPECTFULLY SUBMITTED:

ALSUP LAW OFFICE

By _____

Gary D. Alsup
Attorney for Plaintiff
P.O. Box 518
Clayton, New Mexico 88415
(575) 374-2526 / Fax: (575) 374-2759
E-mail: gary@alsuplawoffice.com