

September 27, 2006

Kenneth Roe
3068 NW Lakeshore Drive
Macy, IN 46951

Re: Formal Complaint 06-FC-152; Alleged Violation of the Access to Public Records Act by the Nyona/South Mud Lake Conservancy District

Dear Mr. Roe:

This is in response to your formal complaint alleging that the Nyona/South Mud Lake Conservancy District (“District”) violated the Access to Public Records Act by asking you to be more specific in your request and by indicating that you should contact another person to get your records.

BACKGROUND

Your formal complaint stems from two requests you made for records of the District. In the first, you requested the sign-in sheet for the regular meeting of the District Board of August 7, 2006. Your hand-delivered request to Board member Ken Hutchins was made on August 15. You enclosed with your complaint a copy of your request showing a hand-written notation on it—“I tried to contact Janiece—no answer. Suggest you keep trying to reach her.” The note continued by stating that Janiece has a day job and an ill relative. You stated that this notation was made by the District. You believe that it is not your responsibility to keep trying to reach Janiece.

Your other complaint concerns a request that you made of the same date for May, June and July 2006 minutes of the regular meetings, as well as copies of the “minutes for any other meetings held during the above timeframe.” The enclosed copy of that request bore a note stating “Please be more specific—as I recall these were executive meetings.” The minutes for the regular meetings for those three months were supplied. You believe that your request for minutes of other meetings that took place is specific enough, particularly in view of the fact that

minutes from the regular meetings showed special meetings planned for three dates in May. In addition, if there were executive meetings, you would like to know the purpose of the meetings.

I sent a copy of your complaint to the District. Board Chairman Ron Roe responded, a copy of which is attached for your reference. Mr. Roe acknowledged receiving your request for meeting minutes, and he stated that on August 17 copies of minutes were mailed to you with an explanation that no other public meetings took place within that time. For the sign-in sheet, Chairman Roe told me that he explained to you that due to the loss of a board member/secretary, the District was unavailable to locate that form. The form was later located on September 7, 2006 and mailed on September 8. Mr. Roe called your residence and left a message with your wife that the form had been mailed.

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. Ind. Code 5-14-3-3(a). A request for a record must identify the record with reasonable particularity. IC 5-14-3-3(a)(1). There is no Indiana case law defining "reasonable particularity," so were it necessary to interpret the APRA to determine what the General Assembly intended this phrase to mean, courts would rely upon the common and ordinary, dictionary meanings of the word used. *Crowley v. Crowley*, 588 N.E.2d 576, 578 (Ind. App. 1992). "Particularity" is defined as "the state of being particular rather than general." THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE (1981), 956. Rules of statutory interpretation also require that one construe the phrase "reasonable particularity" in light of the entire APRA. *Deaton v. City of Greenwood*, 582 N.E.2d 882, 885 (Ind. Ct. App. 1991).

Since the public policy of the APRA favors disclosure and the burden of proof for nondisclosure is placed on the public agency, if an agency needs clarification of a request, then the agency should contact the requestor for more information if it is necessary to respond to the request. *See generally*, IC 5-14-3-1. Therefore, if the District did not understand your request or was unclear as to what public records you were seeking, the District should have contacted you for more information. The District was perhaps trying to seek this clarification when it penned the notation "please be more specific—as I recall, these were executive meetings." However, because you indicated that in addition to the regular meetings, you wanted minutes from any other meetings held by the District during the same timeframe, I confess I do not see much ambiguity in your request. Nevertheless, I decline to find a violation of the Access to Public Records Act. I recommend that in the future, the District divulge what records it has located that may fulfill your request when seeking clarification. For example, the District could have stated: "we have minutes of executive sessions in May and June; please indicate if you want copies of executive session minutes."

You are concerned that the District is overlooking special meetings for three dates in May, but the District has not addressed this concern in its complaint response. I urge the District to carefully review its records to determine whether minutes for special meetings in May exist and to disclose those minutes as soon as possible.

If a public agency receives a request for a record, it must not only respond within certain timeframes, but the public agency is required to allow inspection and copying during the regular business hours of the agency, within a reasonable time after receiving the record request. This office has stated that the obligation to permit inspection and copying belongs to the public agency, not any particular employee of the agency. Hence, if the person normally responsible for public records requests is unavailable, or if the person who would know of the location of a record is out of the office, the public agency may not require that the requester make attempts to contact that specific person. It is incumbent on the public agency to refer the request to the proper person and to fulfill the request without continued efforts on the part of the requester. If the District refused to accept your request but indicated that you must make continuous efforts to reach an individual within the agency, as the notation seems to indicate, this was a violation of the Access to Public Records Act.

CONCLUSION

For the foregoing reasons, I find that the Nyona/South Mud Lake Conservancy District should have sought clarification from you regarding your request for minutes, and may have violated the Access to Public Records Act if the District required you to make efforts to reach a particular person who works for the District.

Sincerely,

Karen Davis
Public Access Counselor

cc: Ron Roe