

November 15, 2006

Sent Via Facsimile

Richard Volbrecht
9221 Parkway Drive
Highland, IN 46322

Re: Formal Complaint 06-FC-180; Alleged Violation of the Access to Public Records Act by the Hammond Sanitary District

Dear Mr. Volbrecht:

This is in response to your formal complaint alleging that the Hammond Sanitary District ("District") violated the Access to Public Records Act by requiring that you locate and make copies of the records and by allowing you unfettered access to the records.

BACKGROUND

Your complaint involves at least two separate requests for records. On October 5, 2006, you asked for copies of documents which list the compensation paid to Joe Allegretti, Hammond Sanitary Board attorney, from January 1, 2003 through August 31, 2006. You also asked for copies of any document that showed when Mr. Allegretti started work as attorney to the District, and a copy of any contract or agreements regarding his service as attorney for the District.

On October 6, 2006, you asked for copies of all quarterly purchase orders that exist from January 1 through October 5, 2006 that authorize the District's contribution to the City of Hammond's self-insurance fund for each member of the District's Board and the District's attorney, Mr. Allegretti. In addition, you asked for copies of the documents that show the amounts for each District board members' contribution toward his or her health insurance.

You state that on October 11, Mr. Bill Beller, Business Manager of the District, escorted you to an area of the lower level of the administrative offices of the District. He pointed out the large ledger books which hold the minutes of the meetings of the District Board. He also

provided a smaller ledger book containing the minutes of the more recent meetings. Finally, Mr. Beller stated that you were free to review any and all records in the large filing cabinets, which you estimated to be 16 or so in number. You further state that when you complained to Mr. Beller that the District had not located the records and that you had asked that the District make copies of most of the documents, Mr. Beller told you that you had to find the records in the file cabinets. You argue that by asking for copies of the records, this meant that the District would locate all the specific records and make the copies for you. You left the administration building about 35 minutes after arriving, having been unwilling to locate the documents within the file cabinets.

You allege three theories: 1) the APRA requires the public agency to provide the requester with the copies, if the requester prefers that the agency locate and copy the records; 2) the District denied you access because it failed to provide you any direction on how to find the documents; and 3) the District, in allowing you unfettered access, has violated Indiana Code 5-14-3-7(a) which requires that a public agency protect its records from loss, alteration, or destruction.

I sent a copy of your complaint to the District. Attorney Joseph Allegretti responded by letter, a copy of which is provided for your reference. Mr. Allegretti argued that all the records you requested, including a September 22 request, were contained in ten file cabinets, and you were directed as to how those records were arranged (for example, purchase order are arranged by date and alphabetically). All the documentation pertaining to your requests are either in the purchase orders or contained in the minutes of the District Board meetings. Mr. Beller explained to you the system by which the records were filed. The District is hampered by the general nature of your requests; hence, providing you access to the records would allow you to identify the precise record. Also, your condition that the cost for copies should not exceed \$15 makes your request to receive copies equivocal, since if the records exceed \$15 the District would not be able to make all the copies you want.

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 (“APRA”). Ind. Code 5-14-3-3(a). A public agency may not deny or interfere with the exercise of the right stated in subsection (a).

The public agency shall either:

- (1) provide the requested copies to the person making the request; or
- (2) allow the person to make copies:
 - (A) on the agency's equipment; or
 - (B) on the person's own equipment.

IC 5-14-3-3(b).

A public agency shall protect public records from loss, alteration, mutilation, or destruction. IC 5-14-3-7(a).

In my opinion, the District did not violate the Access to Public Records Act merely by requiring you to locate the precise records that you wished to inspect or copy. In addition, the

District did not violate the APRA by providing you with the opportunity to make your own copy. It is difficult to see how this would violate your right to inspect and copy records, and you have not advanced any rationale for why you believe this was a denial under the APRA. The APRA clearly states that a public agency shall either provide the copy or allow the person to make a copy on the agency's equipment or the person's own equipment. I have often advised public agencies that so long as a person is afforded the opportunity to inspect and copy public records, it is not a requirement of the APRA that the public agency provide personnel to perform the copying task. I have also advised public agencies that if a request for a specific record is among several similar but non-responsive records, it is sufficient under the APRA to provide the requester the opportunity to look through the file to locate only those records that the requester wishes to examine or copy.

With respect to your second issue, you claim that the District has, by turning you loose in the file room, deprived you of public records by failing to give you helpful guidance as to where the records are located within the numerous file cabinets. I would be inclined to agree that in some circumstances, such free ranging access could effectuate a denial because the requester would be hampered in locating records without a decent roadmap to where the specific records are located among many boxes or file cabinets.

However, the District disputes that you were left entirely to your own devices in locating the records. The District maintains that Mr. Biller explained how the records were arranged and filed. Even under your facts, you left the District offices after just 35 minutes, and except for five minutes, all that time was spent looking through the minutes. It is my opinion that the District did not violate the APRA by asking that you locate the precise records you were seeking, or by asking you to make the copy.

For your third issue, you asked that I issue an informal opinion regarding whether or not the District, by allowing you unfettered access to the records, violated IC 5-14-3-7(a). Your original complaint alleged a violation of the APRA, but as I explained on the telephone, a person who has been denied the right to inspect or copy records under IC 5-14-3 or any other right conferred by the APRA or any other state statute or rule governing access to public records may file a complaint with the Public Access Counselor. IC 5-14-5-6. The duty of a public agency to protect public records from loss, alteration, mutilation, or destruction, is not a right that a person can be deprived of under the APRA. However, you have asked for an informal inquiry response under IC 5-14-4-10(5). Therefore, I will issue an informal inquiry response under separate cover.

CONCLUSION

For the foregoing reasons, I find that the Hammond Sanitary District did not violate the Access to Public Records Act by allowing you to inspect its records, locate the specific records you sought so long as the District has given reasonable instructions on where or how the records may be found, and requiring you to make the copies.

Sincerely,

Karen Davis
Public Access Counselor

cc: Joseph Allegretti