

March 13, 2008

Ted Cecil
1133 West Main Street Suite D
Greenfield, Indiana 46140

Re: Formal Complaint 08-FC-67; Alleged Violation of the Access to Public Records Act by the Greenfield Wastewater Utility

Dear Mr. Cecil:

This advisory opinion is in response to a formal complaint filed by you alleging the City of Greenfield Wastewater Utility ("Utility") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by denying you access to records. A copy of the Utility's response to your complaint is enclosed for your reference. It is my opinion the Greenfield Wastewater Utility must provide the specific statutory authority exempting the information redacted from the records from disclosure in order to bear the burden of proof to sustain the denial of access.

BACKGROUND

You initially filed a complaint on February 26, 2008, alleging you had requested records from the Utility on February 14 but had not yet received them. When you received the records on March 3, you amended your complaint. You now allege the Utility redacted information from the records and that information should have been disclosed to you.

The Utility responded to your original complaint February 29, addressing the issue of when the records would be produced. Because you have amended your complaint, that point is now moot. The Utility also contended that information would be redacted from the records pursuant to I.C. § 5-14-3-4. The Utility contends the names and addresses of individuals are not required to be kept by any state agency and are deemed confidential pursuant to I.C. § 5-14-3-4.

ANALYSIS

The public policy of the APRA states, "(p)roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information." I.C. § 5-14-3-1. The

Utility's office is clearly a public agency for the purposes of the APRA. I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy the public records of the Utility's office during regular business hours unless the public records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. I.C. § 5-14-3-3(a).

Because neither the complaints you submitted nor the response the Utility submitted contain much detail, I can only speculate as to the nature of the complaint and the response. By reviewing the records you have included with your second complaint, I assume you requested a copy of the Utility's log or customer listing. Because the Utility does not provide the specific subsection upon which it relies to redact the names and addresses, I cannot ascertain whether the Utility can sustain its burden of proof for denying you access to this record.

Pursuant to the APRA, a public agency that withholds a public record bears the burden of showing that the record is exempt. I.C. §§ 5-14-3-1, 5-14-3-9(f) and (g). Exceptions to disclosure are narrowly construed. I.C. § 5-14-3-1. If a public agency denies records for these reasons, the denial must include the specific state statute or court rule that applies to the record or records, as required by I.C. § 5-14-3-9(c). Based on the information before me, I cannot find that the Utility has sustained its burden because I cannot ascertain from the Utility's response upon which exception the Utility relies. If, however, the Utility can sustain the burden for denying you access to the redacted information, the Utility has not violated the APRA.

CONCLUSION

For the foregoing reasons, it is my opinion the Greenfield Wastewater Utility must provide the specific statutory authority exempting the information redacted from the records from disclosure in order to bear the burden of proof to sustain the denial of access.

Best regards,



Heather Willis Neal
Public Access Counselor

cc: Dave Scheiter, Superintendent, Greenfield Wastewater Utility