



# STATE OF INDIANA

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September 16, 2010

Ms. Kathleen C. Schoonmaker  
260 Lane 150 Little Otter Lake  
Fremont, IN 46737

*Re: Formal Complaint 10-FC-184; Alleged Violation of the Access to Public Records Act by the Steuben Lakes Regional Waste District*

Dear Ms. Schoonmaker:

This advisory opinion is in response to your formal complaint alleging the Steuben Lakes Regional Waste District (the "District") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.*

## BACKGROUND

In your complaint, you allege that the District violated the APRA by denying you access to public records. You sought access to records regarding the District's planned expansion of sewer service to certain residents in the northeast corner of its boundaries. The District held three public meetings, but you claim that details about the proposed project were not given. As a result, you submitted several public records requests to the District. It is unclear from your complaint what specific records you sought or how you believe the District's response was not satisfactory. You state that you "clearly stated his [presumably referring to Bill Heckley, president of the District's board of trustees] right to deny me the information in the form of a letter. I heard nothing. On August 5, 2010, I received a letter from his lawyer." In that letter, Mr. Boxberger noted that the District had responded to each of your requests by either advising you that records did not exist, providing you access to requested records, or properly denying your request under specific statutory authority.

Attorney Bruce O. Boxberger responded to your complaint on behalf of the District. Mr. Boxberger states that you hand-delivered four requests to the District from July 10<sup>th</sup> through July 14<sup>th</sup>. On July 27<sup>th</sup>, you hand-delivered two more APRA requests, both of which appeared to refer to the same subject matter. With respect to all of these requests, Mr. Boxberger claims that the District fully responded to the requests by providing you access to all files related to the sewer project. In fact, the District set up a

special table for you at its office, where it permitted you to review the files and use the District's photocopier if you found any information that you wished to copy. Mr. Boxberger notes that after the District made those accommodations for you, you mailed two requests to Mr. Heckley on July 15<sup>th</sup> and 16<sup>th</sup>. However, because those requests were mailed to Mr. Heckley's home address rather than the District's business address, Mr. Boxberger argues that the District was not obligated to respond to them. He adds that your requests to Mr. Heckley's home were duplicative of those you submitted to the District's business address.

## ANALYSIS

The public policy of the APRA states that "(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 District does not contest that it is 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 District's public records during regular business hours unless the records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. I.C. § 5-14-3-3(a).

As an initial matter, I agree with Mr. Boxberger that the requests you sent to Mr. Heckley's home were not valid requests. Unless a public official or employee's home address is also the business address of a public agency, public records requests sent to the homes of public officials and employees are not valid requests. *See Opinion of the Public Access Counselor 08-FC-78*. In my opinion, the District did not violate the APRA by failing to respond to the requests you sent to Mr. Heckley's home.

With regard to the six (6) other requests that you submitted to the District within six (6) days, the District's actions in response to your request do not indicate a denial of access. The District responded to your repeated requests for records regarding the sewer project by making space in the District's office available to you and providing you with all responsive records to review and copy on the District's copy machine. Mr. Boxberger correctly notes that the APRA does not set any time periods for **producing** public records, merely for responding to the request." *Opinion of the Public Access Counselor 02-FC-09* (O'Connor; advising that an agency's failure to produce requested documents within five days was not a denial under the APRA) (emphasis added). The public access counselor has stated repeatedly that records must be produced within a reasonable period of time, based on the facts and circumstances. Considering factors such as the nature of the requests (whether they are broad or narrow), how old the records are, and whether the records must be reviewed and edited to delete nondisclosable material is necessary to determine whether the agency has produced records within a reasonable timeframe. Given the number and breadth of your requests, it is my opinion that the District acted appropriately by providing you with all responsive records.

In spite of the fact that the District provided you with access to all responsive records, it is apparent that you believe the District's response is inadequate. It is unclear exactly how you believe the District has acted illegally because you do not specify what records were inappropriately withheld. I note that the District is not obligated to create new records or provide answers to generalized requests for information if such information is not otherwise contained within the agency's records. *See Opinion of the Public Access Counselor 10-FC-56* ("Where records are not yet created, a public agency does not violate the APRA by refusing to produce them.") If the District has provided you with all records responsive to your request, it has satisfied its obligations under the APRA. The District cannot produce records that it does not have. "[T]he APRA governs access to the public records of a public agency that exist; the failure to produce public records that do not exist or are not maintained by the public agency is not a denial under the APRA." *Opinion of the Public Access Counselor 01-FC-61*; *see also Opinion of the Public Access Counselor 08-FC-113* ("If the records do not exist, certainly the [agency] could not be required to produce a copy....").

#### CONCLUSION

For the foregoing reasons, it is my opinion that the District has not violated the APRA.

Best regards,



Andrew J. Kossack  
Public Access Counselor

Cc: Angie Garcia