



STATE OF INDIANA

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July 7, 2011

Ms. Susan Snyder
13900 U.S. Hwy. 12
White Pigeon, MI 49099

Re: Formal Complaint 11-FC-143; Alleged Violation of the Access to Public Records Act by the Delaware County Drainage Board

Dear Ms. Snyder:

This advisory opinion is in response to your formal complaint alleging the Delaware County Drainage Board (the "Board") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* My office forwarded a copy of your complaint to the Board on June 9, 2011, but we have not yet received a response.

BACKGROUND

In your complaint, you allege that the Board failed to respond to your May 17, 2011, records request. In that request, you sought access to various records related to the construction of a county storm drain. As of June 6th, the Board had not acknowledged or otherwise responded to your request.

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 Board appears to be 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 Board'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).

A request for records may be oral or written. I.C. § 5-14-3-3(a); § 5-14-3-9(c). If the request is delivered by mail or facsimile and the agency does not respond to the

request within seven (7) days of receipt, the request is deemed denied. I.C. § 5-14-3-9(b). If the request is delivered in person and the agency does not respond within 24 hours, the request is deemed denied. I.C. § 5-14-3-9(a). A response from the public agency could be an acknowledgement that the request has been received and information regarding how or when the agency intends to comply. Thus, if the Board failed to respond to your mailed request within seven days of receiving it, the APRA deems your request denied. Under the APRA, when a request is made in writing and the agency denies the request, the agency must deny the request in writing and must include a statement of the specific exemption or exemptions authorizing the withholding of all or part of the record and the name and title or position of the person responsible for the denial. I.C. § 5-14-3-9(c). Consequently, the Board's failure to deny your request in accordance with subsection 9(c) violated the APRA.

Without the benefit of a response from the Board, it is unclear to me why your request was denied. Under the APRA, a public agency that withholds a public record bears the burden of proof to show 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. Because the Board has not provided a justification for withholding the records at issue here, it is my opinion that the Board has failed to sustain its burden.

If the Board cannot justify withholding the records under the APRA, I encourage the Board to release the records to you as soon as possible. To the extent the Board persists in its denial of access following the issuance of an advisory opinion from this office and you believe the Board to be in violation of the APRA, I leave you to your remedies before a court pursuant to Ind. Code § 5-14-3-9(e).

CONCLUSION

For the foregoing reasons, it is my opinion that the Board violated the APRA if it failed to respond to your May 17th request.

Best regards,



Andrew J. Kossack
Public Access Counselor

cc: Don Dunnuck