

February 19, 2001

Ms. Gladys Rita Kopala  
66559 Ivy Road  
Lakeville, Indiana 46536

Re: *Advisory Opinion 01-FC-09*; ;Alleged Denial of Access to Public Records by the St. Joseph County Auditor's Office.

Dear Ms. Kopala:

This is written in response to your formal complaint, which was received in this Office on February 2, 2001. You allege that you were denied access to public records by the St. Joseph County Auditor's Office ("Auditor's Office.") Specifically, you claim that Auditor's Office denied you access<sup>1</sup> to information concerning ditch assessments and maintenance funds<sup>2</sup> under the Access to Public Records Act ("APRA.") Mr. Anthony M. Zappia, St. Joseph County Attorney, responded on behalf of the Auditor. A copy of his written response is enclosed.

For the reasons set forth below, it is my opinion that the Auditor's Office failed to respond to your January 17, 2001 written request for access to public records within the twenty-four (24) hour period required under Indiana Code section 5-14-3-9(a) and that this denial is actionable under the APRA.

## BACKGROUND

You contacted this Office by telephone on January 3, 2001 claiming that you were denied access to public records by the Auditor's Office, specifically certain forms containing ditch assessment and maintenance information for a ten-year period. In response to your telephone call, I contacted the Auditor's Office to inquire about your request and their response. I spoke to Ms. Wendy House and she stated that the ditch information you requested has been part of a subsidiary ledger that has been maintained on their computer since 1997. They no longer use the forms you requested, Ms. House also advised you that you could access the prior years' information by inspecting a ledger book, but that they could not make any photocopies of the ledger book due to its size. While the Auditor's Office did provide the information you requested, it was clear from my conversation with you that you did not want to inspect the ledger book to obtain the information. I advised you that the APRA states that if a public agency does not have a means for making a copy of a public record, the agency must permit you access to inspect and make notes from that public record. The Auditor's Office had provided you with the information requested and, just because you believed it should be in another format, this did not mean that the Auditor's Office had denied you access under the APRA.

You then made a written request for the same information to the Auditor's Office on January 12, 2001. You asked for photocopies of the following public records for the last ten (10) years:

Form 63 (R1967) Ditch Duplicate

Form 65M (1972) Ditch Duplicate for Maintenance Assessment

Form 63A Drainage Maintenance Tax Statement

These form numbers allegedly correspond to your conversations with someone at the State Board of Accounts as those forms upon which the Auditor was supposed to keep ditch information. You wrote at the bottom of the request form that you were particularly interested in information concerning the East Bunch-Mud River Ditch, and specifically, the name and address of the property owners using the ditch and the amount of assessment paid by each owner.

On January 16, 2001, you made a handwritten note that you had not received a response from the Auditor's Office. It appears that you then visited the Auditor's Office on January 17, 2001 and, according to your complaint, Ms. House denied that they had ever received your January 12th request. You then filled out another request that day. In another handwritten note, you claim that you received no response from the Auditor's Office as of January 23, 2001. Your formal complaint was received in this Office on January 25, 2001.

In his response to your complaint, Mr. Zappia stated that the Auditor's Office did not deny you access to public records under the APRA. As evidence of this, he attached copies of two letters that he wrote to you on this subject. First, in a letter dated January 19, 2001, he informed you that the forms listed in your request are no longer used by the Auditor's Office and that the current billing system has been approved by the Indiana State Board of Accounts. All annual property maintenance costs are now incorporated in the tax statements for each property owner rather than on the forms you requested from the Auditor's Office. Mr. Zappia also stated in his letter that the Auditor's Office would print a list of property owners on the drain and the amount of acreage per owner so that you could calculate what individual pays, but that they do not keep the individual payment information. In a follow up letter dated January 26, 2001, Mr. Zappia again stated that while the County does not print lists of drainage assessments for each individual property, this information is available on the computerized property tax system. Mr. Zappia then suggested that you could request access to a computer work-station and the Auditor's Office employees would show you how to find the information you are seeking.

## 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." Ind. Code §5-14-3-1. The Auditor's Office is clearly a public agency for the purposes of the APRA. Ind. Code § 5-14-3-2. Accordingly, any person has the right to inspect and to receive photocopies of the public records of the Auditor's Office during regular business hours unless the public records are excepted from disclosure as confidential or

otherwise nondisclosable under Indiana Code section 5-14-3-4. Ind. Code § 5-14-3-3(a).

It is the responsibility of the public agency to respond to requests for access to public records within a specified time period. The APRA does not set any time periods for producing public records, merely for responding to the request. When a person makes a verbal request or hand-delivers a written request to a public agency, a denial occurs in one of two ways. First, a denial may occur when the person designated by the public agency as responsible for records release decisions refuses to permit inspection or copying. Ind. Code §5-14-3-9(a). In the alternative, if twenty-four (24) hours elapse after the agency receives the request and there has been no response, this is also a denial. Id. Once a denial has occurred under the APRA, a person may file suit in the circuit or superior court in which the denial took place to compel the public agency to disclose the public records requested. Ind. Code § 5-14-3-9(d).

Under the facts presented, it is my opinion that the Auditor's Office did not respond to your January 17th public records request within twenty-four (24) hours after it was received. Mr. Zappia's first written response was dated January 19th, beyond the twenty-four (24) hour period set forth at Indiana Code section 5-14-3-9(a). This failure to respond in a timely manner did constitute a denial that is actionable under Indiana Code section 5-14-3-9(d).

It is important to note, however, that you did receive written correspondence from the County attorney dated January 19, 2001. While this may have been beyond the twenty-four (24) hours after the receipt of the January 17th request, the County Attorney advised you that the County no longer maintains ditch fund information on the forms you requested. To the credit of the Auditor's Office and the County Attorney, you were advised that they would provide you with a list to assist you in your efforts and provide assistance to you in using the computer system so that you could find the individual drainage assessment information.

As I advised you by telephone in early January, the fact that a public agency does not maintain information in a format in which you believe it to exist is not a denial under the APRA. Excepting the failure to respond to your January 17th request within twenty-four (24) hours specified under the APRA, the County attorney and the Auditor's Office appear to have made every effort to provide you with information or access to information related to your requests. There is no obligation under the APRA that a public agency create a new record in order to respond to your request and it is more than reasonable for the Auditor's Office to provide you access to the information in the manner in which it was done.

## CONCLUSION

It is my opinion that the St. Joseph County Auditor's Office failed to respond to your January 17, 2001 request for access to public records within the time period specified under Indiana Code section 5-14-3-9(a) and the failure to respond constitutes a denial that is actionable under the APRA.

Sincerely,

Anne Mullin O'Connor

Enclosures

cc: Mr. Anthony Zappia, St. Joseph County Attorney

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<sup>1</sup> You have also alleged that "100R" information you received from the Auditor's Office is not "true or correct." This Office does not render opinions on the accuracy of public records, only on public access. Consequently, this Opinion will be limited to your allegations that you were denied access to public records.

<sup>2</sup> You contacted this Office in January on the very same issue on an informal basis. In writing this Opinion, I have included information I obtained during that prior contact in addition to the information provided with your formal complaint.