

November 8, 2001

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

Re: *Advisory Opinion 01-FC-68*;

Alleged Denial of Access to Public Records by the Marshall County Surveyor's Office.

Dear Ms. Kopala:

This is in response to your formal complaint, which was received on October 24, 2001. You have alleged that the Marshall County Surveyor's Office ("Surveyor's Office") violated the Indiana Access to Public Records Act, ("APRA") Indiana Code chapter 5-14-3, by denying you access to watershed maps for certain ditches. Mr. James N. Clevenger, Attorney for the Surveyor's Office, responded in writing to your complaint in a letter faxed to this Office. A copy of his response is enclosed for your reference. For the reasons set forth below, it is my opinion that the Surveyor's Office did not deny you access or otherwise violate the APRA with respect to your October 1st request.

### BACKGROUND

According to your complaint, on October 1, 2001, you sent a written request for access to public records to the Surveyor's Office. You had requested copies of watershed maps for certain ditches and the Surveyor's Office sent you topographical maps. You contend that this is a violation of the APRA because there is a difference between watershed maps and topographical maps in that they provide distinct types of information.<sup>1</sup> You also state that there was no reason provided for giving you the topographical maps as opposed to watershed maps and that it is your position that so long as you are willing to pay for copies, then you are entitled to access the public records you requested. You then filed your complaint with this Office and provided an audiotape of the portion of the Marshall County Drainage Board meeting held on October 15th at which your request was discussed.<sup>2</sup>

In response to your complaint, Mr. Clevenger stated that the Surveyor's Office did in fact provide you with a topographical map, but that this map constitutes the only map that the Office maintains that show the drain watersheds. Apparently, this was explained to you at the October 15, 2001 meeting of the Marshall County Drainage Board meeting. Essentially, it is Mr. Clevenger's position that since the Surveyor's Office does not have any other watershed maps than the one you were provided, they are under no obligation to create a new map to comply with 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 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. Furthermore, "[t]his chapter shall be liberally construed to implement this policy and place the burden of proof for the nondisclosure of a public record on the public agency that would deny access to the record and not on the person seeking to inspect and copy the record." Ind. Code § 5-14-3-1.

The Surveyor'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 copy the public records of the Surveyor'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). If a public agency denies access to a public record, then that denial is actionable in the circuit or superior court in the county in which the denial occurred. Ind. Code §5-14-3-9.

A public record is defined as:

any writing, paper, report, study, map, photograph, book, card, tape recording, or other material that is created, received, retained, maintained, used, or filed by or with a public agency and which is generated on paper, paper substitutes, photographic media, chemically based media, magnetic or machine readable media, electronically stored data, or any other material, regardless of form or characteristics.

Ind. Code §5-14-3-2. It is my opinion that the 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. The fact that a person is willing to pay for copies of public records is not relevant if the public records requested do not exist.

Under the facts presented, it appears the Surveyor's Office did produce a topographical map in response to your request. This is the only map that Office maintains that shows the watersheds for the drains requested. Accordingly, it was not a denial of access under the APRA for the Office not to produce a different type of map merely because other counties may produce other forms of maps. In fact, the Surveyor's Office did provide the only type of map that Marshall County maintains concerning drain watersheds. For these reasons, it is my opinion that the Surveyor's Office did not deny you access or otherwise violate the APRA with respect to your October 1, 2001 public records request.

## CONCLUSION

It is my opinion that the Marshall County Surveyor's Office did not violate the APRA when it produced a topographical map in response to your October 1, 2001 written request for access to watershed maps for certain drains. The fact that the County does not maintain maps in the format you desire is not a violation of the APRA.

Sincerely,

Anne Mullin O'Connor

Enclosure

cc: Mr. James N. Clevenger, Attorney

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<sup>1</sup> You included a copy of a watershed map from Starke County that apparently is the type of map that you anticipated when you made your request to the Surveyor's Office.

<sup>2</sup> For your information, I did listen to the videotape before rendering this Opinion.