

November 12, 1999

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

Re: *Advisory Opinion 99-FC-9;*
Denial of Access to Public Records by the St. Joseph County Surveyor's Office.

Dear Ms. Kopala:

This is in response to your formal complaint, which was received on October 15, 1999, against the St. Joseph County Surveyor's Office (hereinafter, "Surveyor's Office.") You have alleged that the Surveyor's Office, as record keeper for the county drainage board, denied you access to public records related to rural maintenance funds. Specifically, you have asked what your rights are to access these records and how long a public agency must maintain such public records¹. A copy of your complaint was faxed to Mr. John McNamara, County Surveyor, on the day it was received. A written response was received on October 22, 1999 from Mr. McNamara. 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 violate the Access to Public Records Act by failing to produce public records that no longer exist. The Indiana Public Records Act, Indiana Code chapter 5-15-6 governs the retention of records by local government and is administered by the county public records commission in your county. Any questions concerning the retention of the records in question should be directed to that commission.

BACKGROUND

You requested access to public records that reflect the balances in rural maintenance funds at the Surveyor's Office. Specifically, you want information concerning specific time periods during 1998 and 1999. In your complaint, you allege that the Surveyor's Office has failed to produce such records for certain time periods and you want a clarification as to what your rights are to access documents.

Mr. McNamara, in his response, explains that the "rural maintenance funds," or ditch funds, reports referenced in your complaint were first developed and used in the Surveyor's Office in

1994 as a result of computerization of this process. Prior to computerization, information was compiled by hand after the spring and the county auditor reported fall tax collections to the Surveyor's Office. Since 1994, invoices and taxes collected are entered into the computer and a running total of each fund² is maintained. The information is continually updated and any time a change occurs, the next monthly printout reflects that change. The only way to determine the amount for any particular month is to remove all transactions since that month. There is no official purpose for the Surveyor's Office to maintain archived information, as this is a report that is created for informational purposes only. The county auditor maintains permanent records for the ditch funds.

ANALYSIS

The Access to Public Records Act defines public records 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.

Indiana Code § 5-14-3-2. The general rule under the Act is that any person may inspect and copy the public records of a public agency, except as provided under Indiana Code section 5-14-3-4, the exceptions to access when public records are confidential or nondisclosable at a public agency's discretion.

There is no obligation for a public agency to create a new record in order to respond to a public records request, although there is nothing that prevents a public agency from accommodating such requests. The Surveyor's Office no longer maintains public records that are responsive to your request. This is an appropriate response to a public records request. For these reasons, it is my opinion that the Surveyor's Office's failure to create new records in order to respond to your requests for public records did not violate the Indiana Access to Public Records Act.

Public records must be maintained and retained in accordance with the Indiana Public Records Act, Indiana Code chapter 5-15-6. A county commission on public records administers the Act and the commission members are "the judge of the circuit court, the president of the board of county commissioners, the county auditor, the clerk of the circuit court, the county recorder, the superintendent of schools of the school district in which the county seat is located and the city controller of the county seat city, and if there is no city controller, then the clerk-treasurer of the county seat city or town shall be a member of such commission." The county commission determines the historical and legal value of records and determines how long records must be retained.

It appears that the St. Joseph County Auditor maintains the official financial records for these

funds. For this reason, I recommend that you contact the St. Joseph County Records Commission, through the County Clerk, who serves as secretary to the commission, for more information as to whether the public records in question must be maintained in the Surveyor's Office for any particular time period.

CONCLUSION

It is my opinion that the St. Joseph County Surveyor's Office did not violate the Access to Public Records Act by failing to produce public records that no longer exist. You should contact the St. Joseph County Public Records Commission for more information as to the time period for which the records in question must be maintained.

Sincerely,

Anne Mullin O'Connor

Enclosure

cc: Mr. John McNamara, St. Joseph Co. Surveyor

¹ You also asked for the "true definition of years certified in writing." Mr. McNamara has addressed that issue in his response, but again, this is not an access to public records issue and therefore, will not be addressed in my opinion.

² Each ditch has a separate fund.