

April 19, 2006

Richard L. Smith  
8073 N. Lakeshore  
Macy, IN 46951

*Re: Formal Complaint 06-FC-57; Alleged Violation of the Access to Public Records Act by the Nyona/South Mud Lake Conservancy District*

Dear Mr. Smith:

This is in response to your formal complaint alleging that the Nyona/South Mud Lake Conservancy District (“District”) violated the Access to Public Records Act by failing to respond to your request within 24 hours. I find that the District responded to your request within 24 hours.

#### BACKGROUND

You alleged that you hand-delivered your request for records on March 16, 2006 at the District’s offices. You sought a copy of the bid from Selge Construction for the U.S. 31 project, and you asked whether the decision has been made to include or exclude the U.S. 31 people. As of the date you filed your complaint, March 21, you had not received any response, you allege. You requested priority status for your complaint; however, you have not alleged any of the circumstances for which priority status may be obtained. *See* 62 IAC 1-1-3. Therefore, I am issuing this advisory opinion within 30 days of the filing of your complaint.

I sent a copy of your complaint to the District. Mr. Ron Roe, District Board Chairman, responded by letter, a copy of which is enclosed for your reference. He stated that the District secretary, Kim Zartman, logged your request in at 1:45 p.m. on March 16. She notified Mr. Roe in Florida of your request and Mr. Roe asked her to make a copy of the material and deliver it to you. Mr. Roe then stated that he made six attempts to contact you by telephone to acknowledge the request, without success. The material was made available to you on March 22.

## ANALYSIS

Any person may inspect and copy the public records of any public agency during the agency's regular business hours, except as provided in section 4 of the Access to Public Records Act. Ind. Code 5-14-3-3(a). If an agency receives a request by telephone or hand-delivery, the agency must respond within 24 hours of receiving the request, or the request is deemed denied. IC 5-14-3-9(a). If an agency receives a written request for a record and the agency intends to deny the request, it must deny the request in writing. IC 5-14-3-9(c). There is no specific time within which the agency is required to make the records available for inspection and copying. Rather, this office has stated that records should be provided within a reasonable period of time. Moreover, the agency is not required to mail or hand-deliver the records to a person, only make the records available to the person at the agency's offices.

You complained that the agency did not respond to your request for a record, but according to Mr. Roe, the agency attempted to respond by telephone. You provided a telephone number in your request, but I cannot determine whether you were or were not available at that number. It appears that the District at least made a good faith attempt to acknowledge your request. The District did not deny your request, where a written denial would have been in order. Rather, the agency complied by gathering the records and delivering them to you within one week from its receipt of your request.

I hasten to point out that you requested only one record, the Selge Construction bid. The second part of your request appears to be only a question regarding whether the District made a decision or not. While it is helpful for the District to respond to questions, a person does not have the right under the Access to Public Records Act to receive a response to a question that does not clearly amount to a request for records. It is my opinion that a question regarding whether or not a decision had been made does not request a record.

## CONCLUSION

It is my opinion that the Nyona/South Mud Lake Conservancy District did not violate the Access to Public Records Act.

Sincerely,

Karen Davis  
Public Access Counselor

cc: Ron Roe