

March 13, 2002

Mr. Hans L. Markland
58 W. 1000N
Wheatfield, IN 46392

Re: Advisory Opinion 02-FC-9; Alleged Denial of Access by the Jasper County Surveyor's Office.

Dear Mr. Markland:

This is in response to your formal complaint, which was received on March 5, 2002. You have alleged that the Jasper County Surveyor's Office ("Surveyor's Office") violated the Indiana Access to Public Records Act, ("APRA") Indiana Code chapter 5-14-3, by refusing to provide you copies of public records. Mr. Michael Klingman, Jasper County Surveyor, and Mr. Kent E. Mahnesmith, Attorney for the Jasper County Drainage Board and Surveyor, responded in writing to your complaint. Copies of their responses are enclosed for your reference. For the reasons set forth below, it is my opinion that the Surveyor's Office did not deny you access to public records in violation of the APRA.

BACKGROUND

According to your complaint, on February 28, 2002, you hand-delivered a written public record request to the Surveyor's Office requesting copies of the following:

1. The originating petition to establish the maintenance fund for the Knapp Tile #1951, and if there is none, a written statement to that effect; and
2. Records of Wheatfield-Barnard Ditch regarding flooding on the ditch, the elevation of the water when the water overflows the banks and the acreage flooded when water backs up in the ditch.

According to your complaint, on Friday, March 1st you were advised that County Surveyor Kingman was ill. You then attended the March 4th meeting of the County Drainage Board and the County Surveyor was not in attendance. You then called the Surveyor's Office on Tuesday, March 5th to follow up on your request and were told that the County Surveyor was still sick and that no other employee could handle the request. You then filed your formal complaint with this Office alleging that you were denied access to the requested public records in violation of the APRA.

In response to your complaint, Surveyor Kingman stated that he has attempted to personally accommodate your request and that he is responsible for responding to public records requests, not his staff. At the time of your request, he was ill with the flu for six days but ultimately provided you with a written response to your request dated March 6, 2002. He followed up with additional information in a letter dated March 7th. In those responses, Surveyor Kingman informed you that his Office has neither of the documents you requested, but he did provide you with information related to your requests. In

addition, Surveyor Kingman took steps on your behalf to request documents from the Indiana Department of Natural Resources related to the Wheatfield-Barnard Ditch.

Mr. Mahnesmith stated in his response that there was no violation of the APRA with respect to your February 28th request. In support of his conclusion, he stated that you made your request on that date and Surveyor Kingman was out of the office on his doctor's orders until March 5th. Mr. Mahnesmith indicated that since there were no records satisfying your request this could not be a denial under the APRA. Further, it is his opinion that, depending on the request made, the Surveyor's Office does have a reasonable period of time to research and try to collect the information requested.

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. 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).

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. For requests that are delivered by hand, a denial is deemed to have occurred if twenty-four (24) hours elapse after the agency receives the request and there has been no response. Ind. Code §5-14-3-9(a). 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). The APRA, however, does not set forth outside time periods for production of public records, only for responding to public records requests. See, Ind. Code §5-14-3-9(a) and (b).

From the information provided in your complaint, it appears that the Surveyor's Office did "respond" within twenty-four (24) hours of your request some time on March 1, 2002. You were then "informed that Surveyor Kingman was ill". It is not clear from your complaint or Surveyor Kingman's response what the nature of that conversation was, but it appears that you were advised that the Surveyor would personally handle your request and that he was not in the office that day. On March 1st it appears that you were not advised that your request had been denied by the Surveyor's Office, but you apparently were not also advised of when you could expect to receive copies or the statement you requested indicating there were no records satisfying your request. As noted above, there is no time for production under the APRA, only for a response from the public agency.

Based upon the information provided to me, it is my opinion that the Surveyor's Office did not deny you access in violation of the APRA. You did receive a response from the Surveyor's Office within the time frame provided under the APRA. The fact that you were not provided the copies or information within five (5) days of your request was not a denial under the APRA.

CONCLUSION

It is my opinion that the Jasper County Surveyor's Office did not deny you access to public records in violation of the APRA.

Sincerely,

Anne Mullin O'Connor

Enclosures

cc: The Honorable Michael Kingman

Mr. Kent E. Mahnesmith

¹You referred to this day as February 29th, but it had to have been March 1st as there were only 28 days in February this year.