

April 17, 2008

Alan Freemond
29110 Tanners Lane
Brookville, Indiana 47012

Re: Formal Complaint 08-FC-83; Alleged Violation of the Access to Public Records Act by the Town of St. Leon Sewer Board

Dear Mr. Freemond:

This advisory opinion is in response to your formal complaint alleging the Town of St. Leon Sewer Board (“Board”) violated the Access to Public Records Act (“APRA”) (Ind. Code 5-14-3) by denying you access to records. I have enclosed a copy of the Board’s response to your complaint for your reference. It is my opinion the Board has not violated the Access to Public Records Act.

BACKGROUND

In your complaint you allege that you have submitted to the Board three requests in the weeks preceding your complaint. You have requested the names of certain bondholders involved with revenue bonds to build and support the Town’s sewer system. You allege that John Watson, attorney for the Board, responded to two of your requests, indicating he would provide the information, but did not yet do so. You allege Mr. Watson did not respond to the third request. You filed this complaint on March 24, alleging denial of access.

The Board responded to the complaint by letter dated April 9 from Mr. Watson. Mr. Watson contends that he received an electronic mail message (“email”) from you on March 2, 2008, alleging you had sent three previous emails seeking the names of the bondholders. Mr. Watson indicates he had not received the emails because of some issues with his email account but responded to you on March 3. Mr. Watson indicates that he received an email from you on March 12 and at that time did not have the information you sought. He indicates he received another email from you on March 19, and at that time he did have the information. He contends he sent the information to you on March 20.

Mr. Watson indicates that your request was submitted to Mr. Watson directly and not to the Board. Further, Mr. Watson indicates that you did not use the form promulgated by the

Board for submission of requests to inspect or copy records. Mr. Watson apologizes for the delay in responding to your inquiry.

ANALYSIS

The public policy of the APRA states, "(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." I.C. § 5-14-3-1.

The Board is clearly a public agency for the purposes of the APRA. I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy the public records of the Board during regular business hours unless the public records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. I.C. § 5-14-3-3(a).

A request for records may be oral or written. I.C. §§ 5-14-3-3(a), 5-14-3-9(c). If the request is delivered by mail, facsimile transmission, or electronic mail and the agency does not respond within seven days, the request is deemed denied. I.C. § 5-14-3-9(b).

A request for inspection or copying must:

- (1) identify with reasonable particularity the record being requested; and
 - (2) be, at the discretion of the agency, in writing on or in a form provided by the agency.
- I.C. § 5-14-3-3(a).

Here, you submitted a request for the names of bondholders. You submitted your requests to the attorney for the Board rather than to the Board or any one member of the Board. While I understand Mr. Watson serves as the attorney for the Board and may be responsible for responding to requests for access to records, the APRA contemplates requests submitted to a public agency and not to an agent acting on behalf of the agency. Further, the APRA allows an agency to prescribe a form for requests. I.C. § 5-14-3-3(a). Mr. Watson contends the Board has prescribed a form for requests, and you did not use the form. I cannot find the Board violated the Access to Public Records Act because your request was not submitted directly to the Board or in the form prescribed by the agency.

Additionally, I would note that the APRA requires a requester to identify with particularity a record being requested. I.C. § 5-14-3-3(a). It is my understanding you submitted a request for information, namely the identity of bondholders. To fully comply with the APRA, the request should have identified the particular record you sought to inspect or copy. Nothing in the APRA requires an agency to answer questions or provide information; instead, the APRA protects the public's right to inspect and copy records. Regardless of that, it is my understanding the Board has now provided you with the requested information.

CONCLUSION

For the foregoing reasons, it is my opinion the Board did not violate the Access to Public Records Act.

Best regards,



Heather Willis Neal
Public Access Counselor

Cc: John Watson, Attorney for the Town of St. Leon Sewer Board