

September 15, 2003

Mr. Norman G. Feige
5895 West County Road 150 South
Rockport, Indiana 47635

Re: *Advisory Opinion 03-FC-76*; Alleged Denial of Access to Public Records by the
Luce Township Regional Sewer District

Dear Mr. Feige,

This is in response to your formal complaint, which was received on August 22, 2003. In it, you allege that the Luce Township Regional Sewer District (the "District") has violated the Indiana Access to Public Records Act ("APRA"). Specifically, you allege that you were denied access to a listing of all property owners of record in the District. Mr. Jack Robinson has responded in writing to this Office. A copy of his response is enclosed for your reference. Additionally, I discussed this matter with Mr. William Garrett, President, on August 25, 2003.

For the reasons discussed below, it is my opinion that the District has not violated the APRA, as they simply do not have the public records you have requested.

BACKGROUND

You allege that you requested from the District an electronic copy of the listing of all persons on record as owning property within the geographic boundaries of the District. You allege that you made your request verbally at a meeting of the District, and that your request was rejected by Jack Robinson. You also allege that you made your request in writing, and you enclosed with your complaint a copy of that request dated August 19, 2003 and addressed to Jack Robinson. When you did not receive a response to your request you filed your complaint with this Office.

On August 25, 2003 I discussed your complaint with Mr. Garrett at which time he advised that the District did not have the records you requested. He advised that Mr. Robinson had the been retained to do work for the District and that he had done so but the District had not paid him for the work and therefore the work remained in the possession of Mr. Robinson. Additionally, on August 27, 2003, Mr. Robinson mailed to you a letter of response, which

provided a list of reasons why he would not comply with your request, including his assertion that he is not a public agency. Mr. Robinson forwarded his response to you to this Office in response to your complaint.

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. The District is clearly a public agency for the purpose of the APRA. Ind. Code § 5-14-3-2. Accordingly, any person has the right to inspect and copy the public records of the District 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 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. While this response has not been defined under the APRA, what is contemplated is a communication to the requestor. For example, a public agency may respond that the request has been received, whether there are any records that will be produced, that the records requested are confidential or otherwise nondisclosable, or that the public agency needs more time to compile the records requested. A response may also provide the records requested, or notify the requestor that the public records requested are available for his or her inspection.

As you did not specify whether you mailed your public records request or hand delivered it I will presume for the purposes of this Opinion that you mailed your request. A public agency is required to make a response to a written request sent by mailed within seven (7) days of receiving the request; the failure to do so constitutes a denial under the APRA. Ind. Code § 5-14-3-9(b). Once a denial has occurred under the APRA, a person may file suit in the circuit or superior court of the county in which the denial took place to compel the public agency to disclose the public records requested. Ind. Code § 5-14-3-9(d). It is my opinion that the District failed to respond to your request for public records within the statutorily required seven (7) days.

However, it is my opinion that you have not been denied access to public records because no public records exist that satisfy your request. 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, 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. Since the District has not created, received, retained, maintained, or filed any records containing the information you have requested a public record does not exist.

Although the record apparently does exist it exists in the hands of an independent contractor and not a public agency. Consequently, it is not a public record, and therefore not subject to the provisions of the APRA.

CONCLUSION

It is my opinion that the Luce Township Regional Sewer District failed to respond to your public records request within the seven (7) days as required under the Indiana Access to Public Records Act. However, it is additionally my opinion that you were not improperly denied access to public records because the records you requested do not exist within a public agency.

Sincerely,

Sandra K. Barger
Acting Public Access Counselor

Cc: Mr. Jack Robertson
Mr. William Garrett