

September 17, 2004

Ms. Kathy McCoy  
2095 West Long Lake Road  
Pleasant Lake, IN 46779

*Re: Consolidated Formal Complaints 04-FC-146 and 04-FC-151; Alleged Violation of the Access to Public Records Act and the Open Door Law by the City of Angola, MS4 Storm Water Advisory Group*

Dear Ms. McCoy:

This is in response to your formal complaint alleging that the City of Angola (“City”), violated the Access to Public Records Act and Open Door Law by prohibiting you from attending meetings of the City of Angola’s MS4 Storm Water Advisory Group (“Group”) and by failing to provide you with a copy of the meeting minutes. For the following reasons, I find that the MS4 Storm Water Advisory Group is not a public agency as defined in the Open Door Law. However, to the extent that the City of Angola, through its agent, denied you access to the City’s public records, it violated the Access to Public Records Act.

#### BACKGROUND

You allege that on August 17, 2004, you were informed by Mr. Bill Boyer, Angola City Engineer and Chair of the City of Angola Storm Water Advisory Group, that you could not attend the Group’s meetings. You then asked Mr. Boyer for copies of the minutes from the meetings, and were told that there were no minutes, only some notes taken during the meeting. You filed a formal complaint, which you faxed to this office on August 18, 2004. You also mailed a copy of your complaint to this office, which was assigned formal complaint number 04-FC-151. I am consolidating these complaints for purposes of this opinion. I forwarded a copy of your complaint to the Group, and Mr. Boyer replied on its behalf both in writing and via telephone. For your reference, I have enclosed a copy of Mr. Boyer’s written response.

Mr. Boyer states that the meetings were not open to the public and minutes were not kept because he believed that the Group was not subject to the Open Door Law. Mr. Boyer is an

engineer for the City of Angola, and as part of his job duties, he serves as the MS4 Operator. As MS4 Operator, he is responsible for the development, implementation, and enforcement of storm water control for the City of Angola's jurisdictional area. During the course of his duties as MS4 Operator, Mr. Boyer became aware of a need to set up a group to exchange ideas regarding storm water and to possibly coordinate existing educational programs about storm water issues. He invited various groups to join for those discussions. The members of the Group represent areas that are under Mr. Boyer's control as the City of Angola MS4 Operator, as well as areas outside of his control. The Group has no authority to enact regulations or to make policy. Following several conversations with Mr. Boyer, this office learned that Mr. Boyer's participation in the Group is in his capacity as the City's MS4 Operator, and that he maintains the Group's documents in his city office.

## ANALYSIS

### *Open Door Law*

As a threshold matter, an entity must be considered a "public agency" to be subject to the provisions of the Open Door Law. At issue here are two provisions of the Open Door Law that define a public agency as:

- . . . [A]ny entity or any office thereof, by whatever name designated, exercising in a limited geographical area the executive, administrative, or legislative power of the state or a delegated local governmental power; or
- Any advisory commission, committee, or body created by statute, ordinance, or executive order to advise the governing body of a public agency.

I.C. §5-14-1.5-2(a)(1), (5).

Mr. Boyer states that the Group cannot "enact any regulations and has no power or authority at all." I have received no information either from you or from Mr. Boyer that suggests that the Group can exercise any executive, administrative, or legislative power of the state or of any delegated local governmental power. As such, the Group does not qualify as a public agency under the first definition. Mr. Boyer also confirms that the Group was formed by him, not by any statute, ordinance, or executive order. Furthermore, the Group does not advise the governing body of any public agency. As such, the Group does not qualify as a public agency under the second definition. Therefore, the Group is not a public agency for purposes of the Open Door Law. In addition, neither the Group nor Mr. Boyer are a governing body as defined in I.C. §5-14-1.5-2(b), which is a prerequisite for application of the Open Door Law. As a result, the Group is not required to post notice of its meetings, and its meetings do not have to be open to the public. I note that Mr. Boyer has advised this office that notice of those meetings is now being posted, and the meetings are now open to the public.

### *Access to Public Records Act*

For the Access to Public Records Act to apply to a records request, the agency from whom the records are requested must be a "public agency" as is defined in I.C. §5-14-3-2. The

Group does not qualify as a public agency under those definitions; however, the City of Angola does. The public records of a public agency are subject to disclosure unless confidential or otherwise nondisclosable under I.C. §5-14-3-4. I.C. §5-14-3-3(a). A public record means any “writing, paper, report, study, map, photograph, book, card, tape recording, or other material that is created, received, maintained, or filed by or with a public agency.” I.C. §5-14-3-2. Mr. Boyer is employed by the City of Angola as a city engineer, and as part of his job responsibilities, he also serves as the MS4 Operator. Mr. Boyer states that he chairs the Group meetings in his capacity as the City of Angola MS4 Operator. Insofar as Mr. Boyer is acting in his capacity as the City of Angola’s MS4 Operator at those meetings, any record of the Group that the City of Angola creates, receives, retains, or maintains is a public record of the City of Angola, and as such, is subject disclosure unless confidential or otherwise nondisclosable under I.C. §5-14-3-4. I.C. §5-14-3-3(a). Failure to disclose those records, to the extent that any exist, would be a violation of the Access to Public Records Act.

### CONCLUSION

For the foregoing reasons, I find that the City of Angola Storm Water Advisory Group is not a public agency as defined by the Open Door Law, and therefore, its failure to post notice, its denial of access to meetings, and its failure to maintain meeting memoranda do not constitute a violation of the Open Door Law. However, I find that any documents, including meeting minutes of the Storm Water Advisory Group, that are created, received, maintained, or retained by the City of Angola through its employee’s participation in the Group as the City’s MS4 Operator are disclosable public records unless they meet some exception in I.C. §5-14-3-4.

Sincerely,

Karen Davis  
Public Access Counselor

cc: Mr. Bill Boyer