

August 1, 2005

Derrick Hagerman
7251 Belfonte Lane
Terre Haute, IN 47802

Re: Formal Complaint 05-FC-131; Alleged Violation of the Access to Public Records Act by the Vigo County Air Pollution Control Agency.

Dear Mr. Hagerman:

This is in response to your formal complaint alleging that the Vigo County Air Pollution Control Agency (“VCAPC”) violated the Access to Public Records Act (“APRA”) by failing to respond to your requests for public records.

BACKGROUND

On June 30, 2005 you filed two formal complaints with the Office of the Public Access Counselor. Your complaints concerned two alleged violations of the APRA by the VCAPC. The complaints have been consolidated under formal complaint # 05-FC-131. In your first complaint you stated that you sent a certified letter requesting information on odor complaints to the VCAPC on May 19, 2005. The letter was delivered to the VCAPC on May 23, 2005. Your second complaint is based upon a request that you hand delivered, at 3:00 p.m., on June 22, 2005. On that same date you also sent the request via certified mail. As of June 24, 2005 you had not received a response to either request from the VCAPC.

Mr. George Needham responded to this complaint, on behalf of the VCAPC, by letter dated July 7, 2005. A copy of that response is enclosed for your reference. Mr. Needham stated that you had made a verbal request on March 17, 2005 and had been notified that the documents were available for pick up, but that you had not paid for and picked up the documents. After receiving the June 22nd request, the VCAPC tried to phone you on June 23rd to inform you that the VCAPC was ready and willing to produce the requested copies after you pay for the previous copies and upon receipt of payment for the new request. He stated, however, that the phone number he tried to contact you at was disconnected. In addition, Mr. Needham stated that the reason for requiring you to pay for the previous copies and the new set of copies in advance was due to the fact that you had previously tried to pay for copies with a check drawn from a closed

account. You did make cash payment for those copies at a later time. He also indicated that IC 5-14-3-8(e)(2) allows agencies to require advance payment for copies.

ANALYSIS

Any person may inspect and copy the public records of any public agency, except as provided in section 4 of the APRA. IC 5-14-3-3(a). If a public agency receives a request for records via U.S. mail, facsimile, or e-mail, it has seven (7) days in which to respond. IC 5-14-3-9(b). For requests that are delivered in person, the agency must respond within twenty-four (24) business hours. IC 5-14-3-9(a). A request for records may be oral or written. IC 5-14-3-3(a); 5-14-3-9(c). If the request is made in writing, the agency must respond to the request in writing. IC 5-14-3-9(c). A response may be an acknowledgment that the request for records was received, and a statement of how and when the public agency intends to comply. If the public agency fails to respond within seven (7) days of its receipt of the request, the request is deemed denied.

The VCAPC does not assert that it responded to your request of May 19th. Rather, the VCAPC merely states that you never paid for nor picked up the requested items prepared in response to your March 17th request. Whether you have picked up previously requested records or not has no bearing on the agency's duty to respond to your request. The VCAPC had a duty to respond to your request, in writing, within seven (7) days of receipt of your request. The VCAPC's failure to do so is a violation of the APRA.

Regarding your June 22nd request, which was hand-delivered, Mr. Needham asserts that the VCAPC tried to contact you via telephone on June 23, 2005. The VCAPC was required to respond to your request within twenty-four (24) hours. Had the request been a verbal request then a phone call to respond would have been appropriate. However, you hand-delivered a written request; therefore, the response should have been made in writing and mailed to you within twenty-four (24) hours of receipt of the request. IC 5-14-3-9(c).¹

Additionally, although not part of your complaint, I will address an issue raised by the VCAPC's response. It is not clear whether it was ever communicated to you that the VCAPC intended to require you to pay for copies made in response to a previous records request prior to receiving the copies requested on May 19th and June 22nd. The agency should be on notice that, while the VCAPC is correct that it can require advance payment for copies pursuant to IC 5-14-3-8(e)(2), it may not require you to pay for past due fees prior to receiving copies under a new request. I often advise agencies that the agency may address concerns about collecting copying fees by determining the cost of copying prior to making the copies, and waiting until payment is made before making the copies. This practice would prevent the agency from incurring the cost of copies unnecessarily.

¹ Please note that, while a response must be made within twenty-four (24) business hours of receipt of a hand-delivered request, the written response may be mailed and could take longer than the less than two days that you allowed for it to reach you when you filed your complaint. However, it appears that the agency did not make a written response; therefore, I have addressed the issue in this opinion.

CONCLUSION

For the foregoing reasons, I find that the Vigo County Air Pollution Control Agency violated the Access to Public Records Act when it failed to respond to your May 19, 2005 request for public records within seven (7) days of receiving it. It was also a violation of the Access to Public Records Act when the Vigo County Air Pollution Control Agency failed to respond in writing to your June 22, 2005 request within twenty-four (24) hours of receiving the request.

Sincerely,

Karen Davis
Public Access Counselor

cc: George Needham