



STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

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January 9, 2006

Sent Via Facsimile

R. Bruce Wallace
Kent Shadley
Alliance Environmental Group, Inc.
5340 Commerce Circle – Suite E
Indianapolis, IN 46237

Re: Formal Complaint 05-FC-250; Alleged Violation of the Access to Public Records Act by the Metropolitan School District of Washington Township

Dear Sirs:

This is in response to your formal complaint alleging that the Metropolitan School District of Washington Township (“District”) violated the Access to Public Records Act (“APRA”) by failing to respond to your request for records within 24 hours and by denying you access to the requested records.

BACKGROUND

On December 9, 2005 you filed a formal complaint with the Office of the Public Access Counselor. Your complaint was assigned formal complaint # 05-FC-250. Mr. Jon M. Bailey, an attorney for the District, responded to your formal complaint by letter dated December 23, 2005. A copy of the letter and attachments are enclosed for your reference.

On November 23, 2005 you hand-delivered a request for public records to the District. Charles R. Rubright, an attorney for the District, responded to your request in writing on November 30, 2005. He indicated that the District was compiling the requested records. He stated that the District anticipated that it would have completed its compilation and review of the requested records by December 5, 2005. He stated that if the records were not numerous the District would copy the records and mail them to you at no charge.

You immediately responded by mailing a letter to Mr. Rubright on November 30, 2005. You indicated in your letter that it was your preference to review the original records in person. Your letter was received by Mr. Rubright’s firm on December 5, 2005.

Mr. Jon M. Bailey, an attorney for the District, notified the District on December 5, 2005 that you preferred to review the records in person. The District contacted you thereafter to schedule a time for you to review the records. You reviewed the records on January 5, 2006 and

marked those that you wished to obtain copies of. The District has indicated that it will copy the records and mail them to you within a few days.

Additionally, Mr. Bailey has acknowledged that the District did not respond to your request within 24 hours due to a mistaken belief that your request had been received by facsimile.

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 that is delivered in person, the agency must respond within twenty-four (24) 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). 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 24 hours of its receipt of the hand-delivered request, the request is deemed denied.

The District acknowledged that it did not respond to your request within the required time frame for a hand-delivered request. The District violated the APRA when it failed to respond to your request within 24 hours of receipt of the request.

You also allege that the District's failure to provide you with the records on December 5, 2005 was a denial of the records in violation of the APRA. The APRA does not specify a time for production or inspection of responsive records; however, this office has stated that records must be produced within a reasonable time of the request. Often, this Office is asked to make a determination as to the reasonableness of the time for production by a public agency. What is a "reasonable" time period under one circumstance may not be reasonable under other conditions. Production need not materially interfere with the regular discharge of the functions and duties of the public agency. IC 5-14-3-7(a). The determination of what is a reasonable time for production, therefore, depends upon the public records requested and circumstances surrounding the request.

The District indicated that it anticipated the records would be compiled by December 5th and, if the records were not voluminous, it would copy the records and mail them to you free of charge. However, the District did not contact you on December 5th to inform you that it would not be mailing the records that day as promised. As of the filing of your complaint on December 9th you had not heard from the District and felt that the agency had denied you access by not providing the records on December 5th. Upon further investigation of your complaint my staff attorney learned that the District had contacted you sometime thereafter and the records were produced for your review on an agreed upon date. I often advise agencies to communicate with the requestor if they will not be able to produce the records on the date promised. Had the District communicated with you to schedule a date to review the records on or before December 5th it may have avoided the filing of this complaint. Although the District did not provide the records on the date that it promised, based upon the information provided, it does not appear that the District unreasonably delayed the production of the records.

CONCLUSION

For the foregoing reasons, I find that the Metropolitan School District of Washington Township violated the Access to Public Records Act when it failed to respond to your hand-delivered request within 24 hours of receipt of the request.

Sincerely,

Karen Davis
Public Access Counselor

cc: Jon M. Bailey