

September 1, 2006

Sent Via Facsimile

Dean Trennepohl
P.O. Box 50
11146 Sugar Bluff Road
Monticello, IN 47960

Re: Formal Complaint 06-FC-132; Alleged Violation of the Access to Public Records Act by the Twin Lakes Regional Sewer District

Dear Mr. Trennepohl:

This is in response to your formal complaint alleging that the Twin Lakes Regional Sewer District ("District") violated the Access to Public Records Act by denying you a record.

BACKGROUND

You allege in your formal complaint that you called the District on July 25 or 26 to request a copy of the plans for construction for IDEM permit number 17872R. You state that Superintendent Mike Darter told you that copies of plans would not be disclosed until December 2006 because the plans were not complete. Later that week, on July 28, you went to the District office in Monticello and submitted a written request for a copy of the plans. Again, you were told that you could not receive the plans until December 2006.

I sent the District a copy of your complaint. Mr. Michael Darter, Operations Manager for the District, responded by letter, a copy of which is enclosed for your reference. He does not specifically dispute your allegations that you telephoned the District on July 25 or 26, and visited the District office on July 28. Rather, Mr. Darter denied that the District had denied access to any public record. He alleged that you had requested the records on July 31, 2006 at 3:30 p.m. The District provided a copy of the permit on July 31, but was unable to provide copies of the other documentation that day due to the volume of the material. The District called you to

inform you when the remaining documents would be copied. The documents were copied and all materials were made available on August 8, 2006.

ANALYSIS

Any person may inspect and copy the public records of any public agency, except as provided in section 4 of the Access to Public Records Act (“APRA”). Ind. Code 5-14-3-3(a). If a public agency receives a request for a record in person, the public agency is required to respond within 24 hours or the record is deemed denied. IC 5-14-3-9(a). If the public agency receives a request for a record via U.S. Mail or facsimile, the public agency is required to respond within seven calendar days, or the request is deemed denied. IC 5-14-3-9(b). If a request is made orally, either in person or by telephone, a public agency may deny the request orally. IC 5-14-3-9(c). However, if a request initially is made in writing, or if an oral request that has been denied is renewed in writing or by facsimile, a public agency may deny a written request for a record if the denial states the exemption or exemptions authorizing the public agency to withhold the record, and the name and title or position of the person responsible for the denial. IC 5-14-3-9(c).

A response could acknowledge receipt of the request for records and state how and when the agency intends to comply, without necessarily providing the records within the time for response. Nothing in the Access to Public Records Act provides a time within which records must be produced. Therefore, our office has stated that records should be produced within a reasonable time under the circumstances.

The factual basis for your complaint—that the District outright denied you the records over the telephone and when you submitted a written request on July 28, was not directly refuted by the District. Nor was the District’s letter stating that you submitted a written request on July 31 inconsistent with your version of events. Further, the District does not squarely deny that you were told that the plans were not available until December 2006. If there is a dispute of fact regarding whether you were denied the record, it is one I cannot resolve. If the District told you that the plans would not be available, without having a valid exemption supporting the denial, the District violated the Access to Public Records Act.

By July 31 you were permitted to receive a copy of some of the documents, and others were provided August 8, a little over a week later. If voluminous records were provided by August 8, I do not find that the time for production was unreasonable.

You have communicated with my office since filing your complaint, stating that you had followed-up with the District to request electronic copies of the records because some of the records were not legible. However, you have not provided me with any specific additional allegations that you have been denied the electronic records. I therefore offer no opinion regarding access to electronic records. However, I would observe that the Access to Public Records Act provides that a public agency make reasonable efforts to provide a copy of all disclosable data in an agency’s data storage system to a person upon request. IC 5-14-3-3(d).

CONCLUSION

For the foregoing reasons, I find that if the Twin Lakes Regional Sewer District denied you a record without stating the exemption that applies to the records, the District violated the Access to Public Records Act.

Sincerely,

Karen Davis
Public Access Counselor

cc: Michael Darter