

June 15, 2006

Sent Via Facsimile

Marcus Hodges
47 North Jackson Street
Frankfort, IN 46041

Re: Formal Complaint 06-FC-89; Alleged Violation of the Access to Public Records Act by the Frankfort Municipal Utility Board

Dear Mr. Hodges:

This is in response to your formal complaint alleging that the Frankfort Municipal Utility Board (“Board”) violated the Access to Public Records Act by failing to respond to your record request. I find that the Board violated the Access to Public Records Act if it failed to timely respond to your records request.

BACKGROUND

You hand-delivered a written request for various records to the Board on May 15, 2006. When you filed your complaint with the Public Access Counselor on May 23, 2006, you had not received a response.

I sent a copy of your complaint to the Board. The Board’s responsive letter, written by Steve Miller, did not address the failure to respond to your request, but acknowledged that the Board did receive the request on May 15. At that time, the Board sought legal advice due to the scope of the request. It was necessary to retain new legal counsel because of a conflict, and to gather the many responsive documents. Mr. Miller communicated with my office on May 26 to assure me that the documents were being compiled and would be delivered on May 31.

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). A

public agency that receives a hand-delivered request for records must respond within 24 hours, or the request is deemed denied. IC 5-14-3-9(a). A response contemplates an acknowledgement that the request was received, and some information concerning how and when the public agency intends to comply. The public agency may include some or all of the requested records. However, there is no timeframe within which records are required to be compiled and disclosed. The production time should be reasonable under the circumstances.

The Board has not refuted that it had not responded to your request by the time you filed your complaint. This non-response was a violation of the Access to Public Records Act. The fact that compilation of the many records would take place over the two weeks following your request does not excuse the public agency's failure to issue a responsive letter within 24 hours.

CONCLUSION

For the foregoing reasons, I find that the Frankfort Municipal Utility Board violated the Access to Public Records Act when it failed to respond to your request for records in a timely manner.

Sincerely,

Karen Davis
Public Access Counselor

cc: Steve Miller