

August 1, 2007

Hans Markland  
58 West 1000 North  
Wheatfield, Indiana 46392

*Re: Formal Complaint 07-FC-192 and 193; Alleged Violation of the Access to Public Records Act by the Jasper County Drainage Board and Jasper County Commissioner Kendell Culp*

Dear Mr. Markland:

This is in response to your formal complaint alleging the Jasper County Drainage Board (“Board”) and Jasper County Commissioner Kendell Culp violated the Access to Public Records Act (“APRA”) (Ind. Code 5-14-3) by denying your request for records. A copy of the Board’s response and Mr. Culp’s response to your complaint is enclosed for your reference. Because the request in the two matters is identical and the responses to the requests are identical, I have consolidated the two complaints into this opinion. I find that neither the Jasper County Drainage Board nor Commissioner Culp violated the APRA.

#### BACKGROUND

In your complaint you allege that on June 11, 2007 you submitted a request for access to public records to the Board and Mr. Culp. You specifically requested information related to the formal training and education of the Board’s attorney, Kent Mahnesmith. You provided a copy of a letter from the Jasper County Auditor indicating the county had no records responsive to your request, as Mr. Mahnesmith is an outside contractor and not a county employee. We received your complaint on July 2.

Mr. Mahnesmith responded on behalf of the Board on July 10. Mr. Mahnesmith explained that he is not a county employee but instead a private contractor for the Board. Mr. Mahnesmith has not filed any records with the county containing the information you seek. As such, the county does not maintain any records regarding his education and training background. Mr. Culp responded similarly on July 10, also indicating Mr. Mahnesmith is not a county employee and as such there are no records responsive to your request maintained by the county.

## ANALYSIS

The public policy of the APRA states that "(p)roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information." Ind. Code 5-14-3-1. The Board and Commissioner's office are clearly public agencies for the purposes of the APRA. IC 5-14-3-2. Accordingly, any person has the right to inspect and copy the public records of the Board or Commissioners during regular business hours unless the public records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. IC 5-14-3-3(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 orally, a denial occurs when twenty-four hours have elapsed since the request and the public agency has refused inspection. IC 5-14-3-9(a). It has long been the opinion of the Office of the Public Access Counselor that the twenty-four hours in this provision refers to twenty-four business hours. If the request is made orally, the public agency may deny the request orally. IC 5-14-3-9(c). If the request is delivered by mail or facsimile, the agency must respond to the request within seven days of receipt. IC 5-14-3-9(b).

Here you requested records related to the education and training of Mr. Mahnesmith, who has been retained as the attorney for the Board after a vote to do so at the January 2, 2007 meeting of the Board. You do not indicate whether you submitted your request by appearing in person at the office of the Board or Mr. Culp or whether you made the request by mail or facsimile. Regardless of the method by which you conveyed the request, the county responded to your two requests on June 12, 2007, well within the time prescribed by the APRA.

The Auditor, on behalf of the Board and Mr. Culp, indicated the county had no records responsive to your request because Mr. Mahnesmith is not a county attorney and is instead a private contractor. The APRA contains disclosure requirements for certain personnel records listed in IC 5-14-3-4(b)(8). The APRA does not, though, require a county to maintain training and education records for private contractors. Nothing in the APRA requires a public agency to *develop* records or information pursuant to a request. The APRA requires the public agency to *provide access* to records already created.

## CONCLUSION

For the foregoing reasons, I find that neither the Jasper County Drainage Board nor Commissioner Culp violated the APRA.

Best regards,

Heather Willis Neal  
Public Access Counselor

cc: Kendell Culp, Jasper County Commissioner  
Kent Mahnesmith, Jasper County Drainage Board Attorney