

April 10, 2007

Sent Via Facsimile

Nancy Garbrecht
Indiana-Illinois-Iowa Foundation for Fair Contracting
600 S. Weber Road, Suite 10
Romeoville, IL 60446

Re: Formal Complaint 07-FC-67; Alleged Violation of the Access to Public Records Act by the St. Joseph County Commissioners

Dear Ms. Garbrecht:

This is in response to your formal complaint alleging that the St. Joseph County Commissioners (“Commissioners”) violated the Access to Public Records Act by failing to respond to your request for records. I find that the Commissioners failed to respond to your request for records, in violation of the Access to Public Records Act.

BACKGROUND

On February 22, 2007 you sent to Michael Eby, on behalf of the Commissioners, a request for records. You requested records regarding the Joseph River Bridge Reconstruction program, Logan Street over St. Joseph River, involving Northern Indiana Construction Company, Inc. You sought a copy of any and all change orders, and a copy of certified weekly payroll reports from January 2007. You state that you have had no response from the public agency.

I received a response to your complaint from Mr. Eby, the county auditor, and from the deputy county attorney Terrance Wozniak. I enclose both responses. Mr. Eby stated that he promptly sent the request to the department within the county that maintains those files, with the county engineer as the responsible person. The contact for the office for these records is that office, not the auditor’s office. Mr. Wozniak stated that St. Joseph County has not denied the records. The problem is that because of budgetary restraints, it is not possible to provide the manpower and resources to obtain the documents and copy them for everyone who requests

information. The Indiana-Illinois-Iowa FFC (Foundation for Fair Contracting) is welcome to review the records and make copies of any portion not otherwise exempt. The documents that have been requested contain names and social security numbers of employees of the contractor. Mr. Wozniak wondered whether the social security numbers should be redacted or in the alternative, a release from each employee for the release of his social security number should be secured.

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 or by telephone, 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. However, if a request initially is made in writing, by facsimile, or through enhanced access, or if an oral request that has been denied is renewed in writing or by facsimile, a public agency may deny the request if the denial includes a statement of the specific exemption or exemptions authorizing the withholding of all or part of the public record the name and the title or position of the person responsible for the denial. IC 5-14-3-9(c).

If a public record contains disclosable and nondisclosable information, the public agency shall, upon receipt of a request, separate the material that may be disclosed and make it available for inspection and copying. IC 5-14-3-6(a).

Neither respondent of the Commissioners claims to have made any response required under IC 5-14-3-9(a) or (b); therefore, for purposes of this opinion I assume no response was made within the timeframes required. This was a violation of the Access to Public Records Act. A response acknowledging receipt of your request and promising a fuller substantive response would have fully complied with the Access to Public Records Act, but none was forthcoming.

In addition, although the Commissioners may regulate any material interference with the regular discharge of the functions and duties of the public agency, IC 5-14-3-7(a), the Commissioners may not cite the lack of resources as a reason to deny a person their rights under the Access to Public Records Act. *See* IC 5-14-3-7(c).

A record containing a social security number in the public records of any public agency may not be disclosed, under IC 5-14-3-4(a)(12). Therefore, the Commissioners are required to redact the social security number from the payroll information, and disclose the remainder. In redacting the social security numbers, the Commissioners are required to furnish you a letter that cites to IC 5-14-3-4(a)(12) as their authority for denying you that part of the record. Further, unless at least one of the exemptions set forth in IC 5-14-3-4 applies to any other part of the records you requested, the records must be disclosed.

CONCLUSION

For the foregoing reasons, I find that the St. Joseph County Commissioners violated the Access to Public Records Act by failing to respond to your request for records. The Commissioners should provide you with an opportunity to inspect and copy all disclosable public records as soon as possible. It appears that the Commissioners are now making those records available to you.

Sincerely,

Karen Davis
Public Access Counselor

cc: Terrance Wozniak