



STATE OF INDIANA

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August 29, 2008

Mike Klosinski
c/o John Emry
62 West Jefferson Street
Franklin, Indiana 46131

Re: Formal Complaint 08-FC-189; Alleged Violation of the Access to Public Records Act by the Cordry Sweetwater Conservancy District

Dear Mr. Klosinski:

This advisory opinion is in response to your formal complaint alleging the Cordry Sweetwater Conservancy District ("District") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by denying you access to certified copies of records. A copy of the District's response to the complaint is enclosed for your reference. It is my opinion the District has not violated the APRA.

BACKGROUND

You allege the District violated the APRA by denying you access to certified records related to the District's budget. Specifically, you allege that on August 5, 2008 you requested the District provide you certified copies of the 2007 and 2008 general budgets and the 2007 and 2008 road tax budgets of the District. When the District indicated it could not certify copies, you produced a form for certification and asked a District employee to execute it. The District refused to do so. You filed this complaint on August 8, alleging the APRA requires an agency to produce certified copies of records.

The District responded to the complaint by letter dated August 25 from attorney Douglas Hoffman. The District contends that the certificate of authenticity form you presented appears to be directed to the evidentiary business records exception the hearsay rule and does not appear to be the type of certification contemplated by the APRA. The District explains that it does not maintain the originals of the records you have requested and that those are maintained in the Brown County Auditor's Office. As such, the District contends it cannot certify that the copies it maintains of the budgets are true and accurate. The District contends that once the budget documents leave the District office and are sent to the state, changes can occur which are beyond the District's control. The District indicates it is prepared to provide you copies of the requested budgets but is not

in the position to certify that the documents it provides to you are true and accurate copies of the budget documents. The District indicates you may obtain true and accurate copies from the Auditor's Office.

Upon receipt of a copy of Mr. Hoffman's response on August 25, Mr. Emry provided additional correspondence to this office, reiterating arguments provided in the original complaint.

ANALYSIS

The public policy of the APRA states, "(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." I.C. § 5-14-3-1. The District is clearly a public agency for the purposes of the APRA. I.C. § 5-14-3-2(m). Accordingly, any person has the right to inspect and copy the public records of the District during regular business hours unless the public records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. I.C. § 5-14-3-3(a).

The issue presented here is whether the District is required to provide, upon request, certified copies of records it maintains. Nothing in the APRA expressly requires an agency to provide certified copies upon request. Instead, the APRA provides that "[a]ny person may inspect and copy the public records of a public agency . . ." I.C. § 5-14-3-3(a).

The fee provisions of the APRA, though, contemplate an agency charging a fee for certification of records. See I.C. § 5-14-3-8. Neither this provision nor any other provision in the APRA dictates how records are to be certified or whether every agency must offer certification.

This issue has been addressed previously by this office, in *Opinion of the Public Access Counselor 06-FC-65*, wherein Counselor Davis opined as follows:

The Prosecutor's response that the records are "in the official custody" of other offices, and "the Prosecutor is not the custodian of the records" hints that the Prosecutor may maintain them but does not have the *official* records. To the extent that your request included a request for the *certified* copy of such records, such a response is understandable. A better response of the Prosecutor would have stated either: "We do not have this record, but you can find it at the Clerk's office" or "We have the records, but if you want them to be certified, only the Clerk's office can give you certified records; please advise whether you want our uncertified records." *Id.*, available at <http://www.in.gov/pac/advisory/files/06-FC-65.pdf>.

Counselor Davis indicated that it is appropriate for an agency to direct a requester to the agency responsible for maintaining the official records if the requester wishes to

obtain certified copies of the records. I agree with this analysis, and in my opinion it applies to the present issue. The District has indicated the Auditor's office is responsible for maintaining the true and accurate copies of the budgets. Whether the District should or should not be responsible for maintaining a true and accurate copy of the budgets is something not addressed by the APRA and as such out of the purview of this office. Certainly you are entitled to copies of the records the District maintains (*See* I.C. § 5-14-3-3(a)), and it is my understanding the District is prepared to make those copies available to you.

I cannot find that the District violated the APRA by refusing to sign the certification of authenticity form you presented. Further, absent an affirmative instruction from the General Assembly that every public agency must certify records upon request, I cannot find the District violated the APRA by directing you to the Auditor's office for certified copies of the budgets.

CONCLUSION

For the foregoing reasons, it is my opinion the District has not violated the APRA.

Best regards,



Heather Willis Neal
Public Access Counselor

Cc: Tom Dziennik, Cordry Sweetwater Conservancy District
Douglas Hoffman, Carson Boxberger LLP