



STATE OF INDIANA

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June 18, 2010

Mr. Edward J. Ingram
4422 N. Elm St.
Richland, IN 47634-9428

Re: Formal Complaint 10-FC-133; Alleged Violation of the Access to Public Records Act by the Luce Township Regional Sewer District

Dear Mr. Ingram:

This advisory opinion is in response to your formal complaint alleging the Luce Township Regional Sewer District (the "District") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* The District's response to your complaint is enclosed for your reference.

BACKGROUND

In your complaint, you allege that you requested a copy of certain records from the District on April 29, 2010. You sought "information related to property owners that have signed easements from January 1, 2010 to date," "names of all persons who submitted comments both for and against the Luce Sewer Project during the comment period in March, 2010," and "any letters or correspondence by or on behalf of Luce Township Regional Sewer District to Indiana 15 Regional Planning Commission." You state that you received the list of signed easements on May 11, 2010, from the District's attorney, but you have "not received any reply what so ever [sic] to the other two requests."

In response to your complaint, the District states that it provided you with the names of all property owners, but the remaining information you requested is not maintained by the District. The District further claims that you were aware that the information is not maintained by the District, but by the Indiana 15 Regional Planning Commission.

ANALYSIS

A request for records may be oral or written. I.C. § 5-14-3-3(a); § 5-14-3-9(c). If the request is delivered by mail or facsimile and the agency does not respond to the request within seven (7) days of receipt, the request is deemed denied. I.C. § 5-14-3-9(b). If the request is delivered in person and the agency does not respond within 24 hours, the request is deemed denied. I.C. § 5-14-3-9(a). A response from the public agency could be an acknowledgement that the request has been received and information regarding how or when the agency intends to comply; the agency need not produce the records within these timeframes. Here, if the District failed to respond to your in-person request within twenty-four (24) hours or your written request within seven (7) days, the District violated the APRA.

If the District does not maintain the other records that you seek, it has not violated the APRA by failing to provide you with a copy. The public access counselor has repeatedly said that if a public agency has no records responsive to a public records request, the agency does not violate the APRA by denying the request. “[T]he APRA governs access to the public records of a public agency that exist; the failure to produce public records that do not exist or are not maintained by the public agency is not a denial under the APRA.” *Opinion of the Public Access Counselor 01-FC-61*; see also *Opinion of the Public Access Counselor 08-FC-113* (“If the records do not exist, certainly the [agency] could not be required to produce a copy....”).

On the other hand, if the District’s attorney maintains the responsive records for or on behalf of the District, the District should -- through its attorney -- disclose those records to you unless an exception to the APRA (such as the attorney-client privilege or work product doctrine) applies to permit withholding them. See, e.g., *Opinion of the Public Access Counselor 06-FC-182*, available at <http://www.in.gov/pac/advisory/files/06-FC-182.pdf>.

CONCLUSION

For the foregoing reasons, it is my opinion that if the District failed to respond to your written request within the timeframes specified in Section 9 of the APRA, the District violated the APRA. However, it is my opinion the District did not otherwise violate the APRA if it has no records responsive to your request.

Best regards,



Andrew J. Kossack
Public Access Counselor

Cc: John Wood