

February 13, 2001

Mr. Hans Markland
58 W. 1000 N
Wheatfield, IN 46392

Re: *Advisory Opinion 01-FC-06*; ;Denial of Access to Photocopies by the Jasper County Health Department.

Dear Mr. Markland:

This is in response to your formal complaint, which was received on January 23, 2001. You have alleged that the Jasper County Health Department ("Health Department") has violated the Indiana Access to Public Records Act ("APRA,") Indiana Code chapter 5-14-3. Specifically, you claim that the Health Department denied you access on two occasions. First, the Health Department denied you access to photocopies of soil test reports in response to your verbal request¹ of January 19, 2001. The second denial allegedly took place with respect to your written request for photocopies of the same soil reports that were dated January 22, 2000 and hand-delivered by you that same day. Ms. Sandra Parks, Jasper County Sanitarian, responded in writing to your complaint in a letter dated January 24, 2001. A copy of her response is enclosed for your reference.

For the reasons set forth below, it is my opinion that the Health Department denied you access to public records under the APRA in response to your January 19th verbal request when you were told that you could not have photocopies of the soil reports. This denial is actionable under Indiana Code section 5-14-3-9(d). With respect to your January 22nd hand-delivered written request for the same photocopies, the Health Department did not deny you access to photocopies of the public records requested.

BACKGROUND

According to your complaint, you made requests on two separate days, January 19 and January 22, 2001, to the Health Department, to inspect and obtain photocopies of specific soil test reports. Initially, you appeared in person and made a verbal request on January 19th. On January 22nd, you made a written request for photocopies of the same soil reports. Your complaint states that Ms. Parks refused to permit you access to photocopies of the reports at both times. On January 23, 2001, you filed a formal complaint with this Office via facsimile at 9:00 a.m. We contacted you by telephone because Ms. Parks had contacted our Office that very day asking about her obligation to provide you with photocopies of soil reports. Although we had advised you by telephone after the filing of your formal complaint that the Health Department had already made copies for you and that they were ready for you to pick-up, you chose to proceed with your complaint.

In her response, Ms. Parks stated that she believes she did not deny you access to the soil reports in question on January 19th because she did permit you to inspect them and make notes from them. At that time, she did not provide any photocopies based upon an office policy that soil tests are not to be released to any one other than the person whose name is listed on the report. After receiving your January 22nd requests, Ms. Parks contacted both the Health Officer and this Office at which time she was advised to release photocopies of the soil reports to you. Because Ms. Parks received your written request for access to photocopies of these soil reports on January 22, 2001 at 3:30 p.m., she challenges the validity of your formal complaint because it was filed with this Office less than twenty-four (24) hours after you delivered your written request. As of the time she faxed her response to this Office, 11:58 a.m. on January 24, 2001, the photocopies were ready for you to pick up at the Health Department but you had yet to pick them up.

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 Health Department is clearly a public agency for the purposes of the APRA. Ind. Code § 5-14-3-2. Accordingly, any person has the right to inspect and to receive photocopies of the public records of the Health Department during regular business hours unless the public records are excepted from disclosure as confidential or otherwise nondisclosable under Indiana Code section 5-14-3-4. Ind. Code § 5-14-3-3(a).

It is the responsibility of the public agency to respond to requests for access to public records within a specified time period. The APRA does not set any time periods for producing public records, merely for responding to the request. When a person makes a verbal request or hand-delivers a written request to a public agency, a denial occurs in one of two ways. First, a denial may occur when the person designated by the public agency as responsible for records release decisions refuses to permit inspection or copying. Ind. Code §5-14-3-9(a). In the alternative, if twenty-four (24) hours elapse after the agency receives the request and there has been no response, this is also a denial. Id. Once a denial has occurred under the APRA, a person may file suit in the circuit or superior court in which the denial took place to compel the public agency to disclose the public records requested. Ind. Code § 5-14-3-9(d).

Under the facts presented, it is my opinion that the Health Department denied you access to photocopies of the soil reports when you appeared in person on January 19, 2001 and were told that you could only inspect and make notes from these reports. This is a denial that is actionable under Indiana Code section 5-14-3-9(d).

With respect to the January 22nd written request, the Health Department was correct in challenging your formal complaint. You did not permit them the full twenty-four (24) hours to respond under the APRA and this Office had no basis for acting upon a formal complaint as to these written requests at the time you filed your formal complaint. Further, despite the fact that you had been advised that the Health Department had made the requested photocopies in response to your written requests,

you still wanted to proceed with your formal complaint. The Health Department did not deny you access with respect to your written request of January 22, 2001. To their credit, the Health Department not only responded to your request, but also produced the photocopies within twenty-four (24) hours after receiving your request.

CONCLUSION

It is my opinion that the Jasper County Health Department denied you access to photocopies with respect to your January 19, 2001 verbal request and this denial is actionable under Indiana Code section 5-14-3-9(d). There was no denial of access with respect to your January 22, 2001 written request as the Health Department did respond within the statutory time frame set forth at Indiana Code section 5-14-3-9 (a) and, in fact, provided you with the requested photocopies.

Sincerely,

Anne Mullin O'Connor

Enclosures

cc: Ms. Sandra Parks, Jasper County Sanitarian

¹ According to your complaint, you asked for two (2) different soil reports. For the purposes of this Opinion, I have referred to them collectively as your "request."