

September 27, 2004

Mr. Timothy K. Eckerle
Grant County Economic Growth Council
301 S. Adams Street
Marion, IN 46952

*Re: Informal Response to Formal Complaint 04-FC-136; Alleged Violation of
Access to Public Records Act by the Madison Grant Workforce Investment Board*

Dear Mr. Eckerle:

This is in response to your formal complaint alleging that the Madison Grant Workforce Investment Board (“Board”) violated the Access to Public Records Act (“APRA”), I.C. §5-14-3. Specifically, you allege that the Board failed to respond to your request for access to public records.

It is my opinion that because you are not the person who made the records request, you do not have standing to allege a denial of access to public records. Furthermore, because this formal complaint was not submitted within thirty days of the alleged denial of access, you do not have grounds to file this formal complaint with this office. Therefore, I am issuing this informal response. I find that the Board failed to respond in writing to the December 24, 2003 request and that it failed to adequately respond to the renewed January 23, 2004 request, both of which are violations of the Access to Public Records Act.

BACKGROUND

You allege that on December 24, 2003, you sent a letter to the Madison Grant Workforce Investment Board seeking access to public records. Specifically, you sought:

- The schedule of all local elected official’s meetings;
- The schedule for the request for proposals for the fiscal agent and service providers;
- A detailed budget, including all salaries, expenses for the fiscal agent, and Grant County Workforce Services; and
- A list of all appointments to the Board and their terms of office.

You allege that on January 23, 2004, you submitted another request for this information, but received no response to your request.

Pursuant to I.C. §5-14-5-8, I forwarded a copy of your complaint to the Board. Ms. Sandra Huntzinger, Chief Elected Official of the Madison Grant Workforce Development Board, responded. A copy of her response is enclosed for your reference. Ms. Huntzinger has provided copies of the December 24, 2003 and January 23, 2004 requests, both of which show that the requests for records were made by Mayor Leach and Mayor Seybold, not by you. She also includes a copy of the Board's response to Mayor Leach and Mayor Seybold's January 23, 2004 records request.

Additional facts will be presented as warranted in the analysis.

ANALYSIS

In 1999, the Indiana General Assembly enacted legislation creating the Office of the Public Access Counselor and a formal complaint process. *See generally, P.L. 70 and P.L. 191-1999.* The Public Access Counselor may receive and respond to informal inquiries and issue advisory opinions in response to formal complaints. I.C. §5-14-4-10(5) and (6); I.C. §5-14-5-9. An informal inquiry may be made by the public or public agencies by telephone, in writing, by facsimile, in person, or electronic mail. I.C. §5-14-4-10(5). The informal inquiry process, therefore, is available to any person who has questions or concerns about the state's public access laws.

The formal complaint process is set out in I.C. §5-14-5. In the formal complaint process, a person may file a formal complaint and receive a formal advisory opinion from this office if they have been denied: (1) the right to inspect or copy records under the Access to Public Records Act; (2) the right to attend any public meeting of a public agency in violation of the ODL; or (3) any other right conferred by the Access to Public Records Act or the ODL or any other statute or rule governing access to public meetings or public records. I.C. §5-14-5-6. A person who chooses to file a complaint alleging such a denial must do so not later than thirty days after the alleged denial. I.C. §5-14-5-7.

The copies of the December 12, 2003 and January 23, 2004 requests, which were provided by Ms. Huntzinger and which you reference in your complaint, show that the requests were not made by you but by Mayors Leach and Seybold. If you did not make the requests at issue, you cannot be considered to be a person denied the right to inspect or copy records, or denied any other right conferred by the Access to Public Records Act. *Opinion of the Public Access Counselor 04-FC-83.* Therefore, you do not have standing to file a formal complaint with this office, pursuant to I.C. §5-14-5-6.

Aside from issues of standing, I.C. §5-14-5-7 requires that a person who chooses to file a formal complaint with this office must do so not later than thirty days after the alleged denial. In this instance, you state that the alleged denial occurred on December 24, 2003 or on January 23, 2004. Nothing in either your complaint or Ms. Huntzinger's response indicates that there has been a renewed request for these records, or a denial thereof, within thirty days of the date you filed your complaint. Therefore, you have

failed to file your complaint in a timely manner, and we are unable to issue a formal advisory opinion on this matter. You are, however, entitled to receive an informal response to your concerns, and that response is provided below.

The Madison Grant Workforce Investment Board is a public agency for purposes of the Access to Public Records Act. Indiana Code §5-14-3-3(a) provides that any person may inspect and copy the public records of any public agency during the regular business hours of the agency, except as otherwise provided in the Access to Public Records Act. I.C. §5-14-3-3(a).

A public agency that receives a request for records under the Access to Public Records Act has a specified period of time to respond to the request. I.C. §5-14-3-9(b). When a public record request is made in writing and delivered to the public agency by mail or facsimile, the public agency is required to respond to that request within seven (7) days of receipt of the request. If that period of time elapses without a response, the request is presumed denied. I.C. §5-14-3-9(b). Furthermore, when a request has been made in writing, the response must also be made in writing. I.C. 5-14-3-9(c).

A timely response to the request need not include production of the requested documents. A public agency may comply with its response obligation under the statute by acknowledging receipt of the request and indicating the specific actions the agency is taking toward production.

Ms. Huntzinger's response states that when the December 24, 2003 request was received, Mr. David Glickfield, Commissioner of the Board, advised her that he would have a meeting with Mayor Leach and Mayor Seybold after Mayor Seybold was sworn in as Mayor. Ms. Huntzinger states that Mayor Leach and Mayor Seybold's request was unclear, and the purpose of the meeting was to clarify the records request. For undetermined reasons, that meeting never took place, and it appears as if no written response was sent to Mayor Leach and Mayor Seybold. The Board was required to provide a written response to Mayor Leach and Mayor Seybold's request within seven (7) days of the Board's receipt of the request. You allege that no response was received. To the extent that the Board did not respond, in writing, to Mayor Seybold and Mayor Leach's December 24 request within seven (7) days, it violated the APRA.

The Board then received Mayor Seybold and Mayor Leach's January 23, 2004 request for access to public records. The second request sought the same records as the December 24 request, and also sought a meeting of all elected officials that were members of the Board for the purpose of reviewing the requested material. On January 28, 2004, Ms. Huntzinger responded in writing to Mayors Seybold and Leach and provided a list of the members of the Board, which was one of the requested records. She also advised them that Commissioner Glickfield would set up the requested meeting.

Although not stated in her letter to Mayor Leach and Seybold, Ms. Huntzinger advises this office that some of the materials requested were not readily available and had to be prepared. To that end, the requested cost report records were prepared by the

Board's fiscal agent and were mailed to Mayor Leach and Mayor Seybold in early February. Ms. Huntzinger states that the fiscal agent and Commissioner Glickfield continued to work on the other requests. Also not included in her letter to Mayor Seybold and Mayor Leach, but stated in her response to this office is that the Board believed the requests were unclear and believed that meetings were needed to clarify the requests. At some point, communication between the Board and the mayors broke down; however, Ms. Huntzinger believes that all requested information has now been provided to the mayors.

Ms. Huntzinger's response to Mayor Seybold and Mayor Leach was only partially responsive. While her response does provide one of the records requested, she makes no mention of any of the other records Mayors Leach and Seybold requested. She also acknowledges that the Board would be setting up a meeting with them, but does not state what the meeting is for. The Board was required to state the actions being taken toward production. If meetings with Mayors Leach and Seybold were needed for the purpose of clarifying their request, as Ms. Huntzinger suggests in response to this complaint, her letter to them should have indicated so. A better response from the Board would have stated that the request needed clarification, and would have advised that meetings between the Board and requestors were needed to narrow or clarify the request. Because the Board's response did not advise the requestor with regard to the action being taken, and in fact, did not reference the other requested records at all, I find that the Board's reply was deficient, and that it violated the Access to Public Records Act.

CONCLUSION

It is my opinion that because you are not the person who made the records request, you do not have standing to allege a denial of access to public records. Furthermore, because this formal complaint was not submitted within thirty days of the alleged denial of access, you do not have grounds to file this formal complaint with this office. As to the informal inquiry response, I find that the Board failed to respond in writing to the December 24, 2003 written request and that it failed to adequately respond to the renewed January 23, 2004 request, both of which were violations of the Access to Public Records Act.

Sincerely,

Karen Davis
Public Access Counselor

cc: Ms. Sandra Huntzinger; w/out enclosures