

September 15, 2004

Mr. John T. Lewis
P.O. Box 104
N. White River Road
Campbellsburg, IN 47108

Re: Formal Complaint 04-FC-144; Alleged Violation of the Access to Public Records Act by the Washington County Health Department

Dear Mr. Lewis:

This is in response to your formal complaint alleging that the Washington County Health Department ("Health Department") violated the Access to Public Records Act by failing to produce the public records you requested. For the reasons below, I find that the Washington County Health Department violated the Access to Public Records Act.

BACKGROUND

On September 18, 2003, you mailed a request for documents to the Washington County Health Department. Specifically, you sought documents relating to a complaint which had been filed with the Health Department against the Old Paths Baptist Church alleging the existence of sewage discharge or conditions that may promote disease. You made renewed requests for those documents on July 13, 2004, July 29, 2004, and August 3, 2004. Having received no response, you filed a formal complaint. This office received your formal complaint on August 16, 2004 and I forwarded a copy to the Washington County Health Department. Mr. Michael Haddon, Environmental Supervisor, responded on behalf of the Health Department. I have enclosed a copy of his response for your reference.

In his response, Mr. Haddon states that your requests were given to the Washington County Attorney's Office, who the Health Department believed was going to handle the matter. He advises that the Health Department did not send the information to you because it was unsure what documents could be disclosed since the Old Paths Baptist Church, of which you are the Pastor, had a lawsuit pending against the Health Department.

ANALYSIS

The Washington County Health Department is a public agency for purposes of the Access to Public Records Act. A public agency that receives a request for records under the APRA must respond to that request and must do so within a specified period of time. I.C. §5-14-3-9(b). A timely response to the request need not include production of the requested documents or expressly decline to produce documents responsive to the request. 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 of the requested document.

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. I.C. §5-14-3-9(b). If that period of time elapses without a response, the request is presumed denied. I.C. §5-14-3-9(b).

Your first request for these documents was submitted to the Health Department on September 18, 2003; however, the response or lack of response to that request is outside of the scope of this opinion as the complaint regarding your September 18, 2003 request was untimely filed. See I.C. §5-14-5-7. The Health Department acknowledges that it received your requests for information. However, it was unsure what information could be given to you and it forwarded your requests to the Washington County Attorney's Office. Even though your requests were forwarded to the Washington County Attorney's Office, and even though the Health Department was unsure about what information to give to you, the Health Department is still required to respond to your requests. The Health Department could have responded to you by advising you that it was consulting with counsel to determine what could be disclosed. It failed to do so. I find that the Health Department's failures to respond to your July 13, July 29, and August 3 requests violate the Access to Public Records Act.

I note that on August 18, 2004, the records you requested were sent to you. The APRA does not contain any specific deadline for production of documents; however, this office has stated that the agency must produce responsive documents within a reasonable time. The factors that must be evaluated when determining reasonableness of the timeliness of production include the number of documents in the request, whether the documents are stored offsite, and whether the documents contain partially disclosable and nondisclosable information. In any case, this office has held that the public agency has the burden of showing that the time for production was reasonable. *Opinion of the Public Access Counselor 00-FC-5*. For purposes of this opinion, your first request for documents was sent on July 13, 2004. The records sent to you in response to your requests consisted only of 2 one-page documents. With the exception of its uncertainty regarding what documents could be sent, the Health Department has pointed to no other factor that demonstrates that the five (5) weeks it took to provide the records was reasonable. I find that the length of time that the Health Department produced the records was unreasonable, and therefore, was a violation of the Access to Public Records Act.

CONCLUSION

For the foregoing reasons, I find that the failure of the Washington County Health Department to respond to your request for documents within the appropriate time period is a

violation of the Access to Public Records Act. I further find that the Washington County Health Department's production of records was untimely, and therefore was a violation of the Access to Public Records Act.

Sincerely,

Karen Davis
Public Access Counselor

cc: Mr. Michael Haddon; w/o enclosures