

February 11, 2005

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

Re: Formal Complaint 05-FC-14; Alleged Violation of the Access to Public Records Act by the Jasper County Highway Department

Dear Mr. Markland:

This is in response to your formal complaint alleging that the Jasper County Highway Department (“Department”) violated the Access to Public Records Act (“APRA”) by denying you the right to inspect and copy its records. I find that the Jasper County Highway Department violated the Access to Public Records Act.

BACKGROUND

You have sought two records from the Department. On January 12, 2005 you submitted a written request for the Jasper County Road Inventory. On January 13, 2005 you submitted a request in writing for the operational report filed in 2004. You allege that you have not received either record, and have been told that the Inventory does not exist.

I sent a copy of your formal complaint to the Department. I received a response from Mr. Jack Haberlin, Jasper County Engineer. I have enclosed a copy of his response for your reference. In his letter, Mr. Haberlin states that the Department is sending you a copy of the 2003 operational report; the 2004 operational report will not be available until June 1, 2005. With respect to the Inventory, he explained to you that the report was very large and that the Jasper County Roadway Map has the same information and is free. He also told you that should you need an official computer print out of the road inventory you could request it of the Indiana Department of Transportation. The Highway Department does not have a way to produce this type of printout. The response is silent with respect to the time or manner in which the Department responded to your various record requests.

ANALYSIS

Any person may inspect and copy the public records of a public agency during the agency's regular business hours, except as provided in section 4 of the APRA. Ind.Code 5-14-3-3(a). A public agency that receives a request for a record in person or over the telephone must respond within 24 business hours of the time the request is received. IC 5-14-3-9(a). If the request is received by mail, facsimile, or e-mail, the request must be responded to within seven calendar days. IC 5-14-3-9(b). A denial, if any, to a written request for records must be in writing and must include a statement of the specific exemption or exemptions authorizing the withholding of all or part of the public record, and the name and the title or position of the person responsible for the denial. IC 5-14-3-9(c).

Here, it appears that the Department did not issue a denial in writing. Also, the Department has not denied you the record on the basis of any exemption that applies to that particular record. If the agency maintains a public record, it must allow inspection and copying at the request of the person, even if some other agency maintains a similar record. Hence, the Department's denial of the record because the Indiana Department of Transportation has the record is not a proper denial under the APRA.

However, if a public agency does not have reasonable access to a machine capable of reproducing the record, the person is only entitled to inspect and manually transcribe the record. IC 5-14-3-9(e). The Department has stated that it does not have the means to print out the inventory list on the very large paper that the Department of Transportation has. This stops short of stating that the Highway Department has no means of copying the inventory list in the format that the Highway Department maintains it. In any case, the Department should have issued a written denial of your right to copy stating that it does not maintain a machine capable of copying its record, if that is the case.

With respect to the assertion that a highway map that you have received has "the same information" on it, I express some doubt that the Department could deny you the inventory report on this basis. If an agency has already made a copy of a record available to a person and the person wants additional copies of the substantially same record, the Department may not be required to make multiple copies. Here, an inventory of roads in a county may contain similar information as a road map of that county, yet be a different record, because the information is arranged differently. Hence, in my opinion, the Department could not deny you the road inventory report because you have a county roadway map.

Finally, you also complain that on January 13 you submitted a written request to the Department for the Jasper County operational report. You filed your complaint on that matter on January 19, prior to the agency's time in which to respond would run. I cannot find that the Department denied you this record in violation of APRA. I note that the Department promised on January 26 to send you a copy of that report.

CONCLUSION

For the foregoing reasons, I find that the Jasper County Highway Department denied you a record in violation of the Access to Public Records Act.

Sincerely,

Karen Davis
Public Access Counselor

cc: Mr. Jack Haberlin