
OPINION OF THE PUBLIC ACCESS COUNSELOR

ANNE HENSLEY POINDEXTER

Complainant,

v.

N.W. SHELBY COUNTY REGIONAL SEWER DIST.,

Respondent.

Formal Complaint No.

21-FC-136

Kristopher L. Cundiff¹

Deputy Public Access Counselor

This advisory opinion is in response to a formal complaint alleging the Northwest Shelby County Regional Sewer District violated the Access to Public Records Act.² The district failed to respond to the complaint despite an invitation to do so. In accordance with Indiana Code § 5-14-5-10, I issue the following opinion to the formal complaint received by

¹ Attorney in active good standing, duly admitted to the practice of law in the State of Indiana. Public Access Counselor Luke H. Britt recused himself from this matter.

² Ind. Code § 5-14-3-1-10.

the Office of the Public Access Counselor on September 7, 2021.

BACKGROUND

In this case we consider whether a public agency's lack of response to a public records request violated the Access to Public Records Act (APRA).

On August 6, 2021, Anne Hensley Poindexter (Complainant) filed a public records request with the Northwest Shelby County Regional Sewer District (District) seeking the following:

1. Copies of any and all documents evidencing appointments of members of your Board.
2. Copies of the minutes of each and every meeting of your Board.
3. Copies of each and every listing of your Board, past and present including contact information.
4. Copies of all financial reports including but not limited to reports showing loans, grants and other receipt of funds, detailed reports of expenditures, balance sheets, income statements, and any other financial reports available.
5. Copies of any plans for a package plant including estimates for the constructions and operation.
6. Copies of any other plan for service withing your territory.

On September 7, 2021, Hensley Poindexter filed a formal complaint with this office alleging the District improperly

denied her request because she never received an acknowledgement or a response.

On September 10, 2021, this office notified the District of the complaint by email and standard mail. The District failed to respond the formal complaint despite the invitation to do so.

ANALYSIS

1. The Access to Public Records Act

The Access to Public Records Act (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 Northwest Shelby County Regional Sewer District is a public agency for purposes of APRA; and therefore, subject to its requirements. *See* Ind. Code § 5-14-3-2(q). As a result, unless an exception applies, any person has the right to inspect and copy the agency’s public records during regular business hours. Ind. Code § 5-14-3-3(a).

Indeed, APRA contains mandatory exemptions and discretionary exceptions to the general rule of disclosure. *See* Ind. Code § 5-14-3-4(a) to -(b).

2. Cooperation from public agencies

As a preliminary matter, this opinion will address the District’s failure to submit an answer to this office after receiving notice of the formal complaint against it. Indiana Code section 5-14-5-5 expressly states that a “public agency shall

cooperate with the [Public Access] Counselor in any investigation or proceeding under this chapter.” Indeed, the chapter referenced in that statute is the one that governs the formal complaint procedure administered by this office. In other words, public agencies must work with this office in any formal complaint investigation or proceeding.

Here, the District failed to provide an answer to the allegations in the formal complaint despite receiving notice and an invitation to do so.

Plainly enough, doing nothing falls short of the cooperation required by the statute. The District should be mindful going forward that cooperating with this office necessarily requires—at minimum—a response to a formal complaint and any claims raised in it. Otherwise, this office will presume that the agency does not dispute a complainant’s allegations.

Although it would undoubtedly help many respondents facing public access complaints, this office will not form and present arguments on behalf of an agency that fails to respond.

CONCLUSION

It is the opinion of this office that the Northwest Shelby County Regional Sewer District violated the Access to Public Records Act.



Kristopher L. Cundiff
Deputy Public Access Counselor



Luke H. Britt
Public Access Counselor