

January 9, 2007

Mr. Richard Smith
6073 N. Lakeshore Drive
Macy, IN 46951

Re: Formal Complaint 06-FC-212; Alleged Violation of the Access to Public Records Act by the Nyona South Mud Lake Conservancy District

Dear Mr. Smith:

This is in response to your formal complaint alleging that the Nyona South Mud Lake Conservancy District (“District”) violated the Access to Public Records Act by denying you access to records. I find that the District is required to maintain memoranda, and in failing to do so, violated the Open Door Law. I also find that the District violated the Access to Public Records Act if, and only if, the District failed to disclose a letter from QAE to the District.

BACKGROUND

You submitted a written request for records to the District. You requested, among other things, a bill for services by a company called QAE, and the October 9 special meeting minutes. Your complaint is that although you have received meeting minutes from the October 2 regular meeting of the District, you were told that no October 9 minutes existed. You requested the bill for services by QAE because the October 2 minutes noted that “There was discussion regarding a bill for services submitted to the Board by QAE for services and expenses during the time of June 1, 2006 though Sept. 30, 2006.” You complain that the District has not disclosed this bill.

I sent a copy of your complaint to the District. District Board Chairman Ronald Roe responded, a copy of which is attached for your reference. Mr. Roe stated that he has provided all the documents you requested, along with an explanation of those documents that do not exist. On the telephone, Mr. Roe stated that the October 9 minutes do not exist because he believed that the law did not require minutes for a special meeting. He also stated that the October 2 minutes refer to a letter from QAE regarding payment for services, but no formal bill or invoice

was ever submitted. Mr. Roe stated that he believed that this letter had been furnished to you, but if it had not, he was willing to disclose it to you.

ANALYSIS

Any person may inspect and copy the public records of any public agency, except as provided in section 4 of the Access to Public Records Act (“APRA”). Ind. Code 5-14-3-3(a). Under the Open Door Law, a public agency is required to maintain memoranda as the meeting progresses. The memoranda must contain:

- (1) The date, time, and place of the meeting.
- (2) The members of the governing body recorded as either present or absent.
- (3) The general substance of all matters proposed, discussed, or decided.
- (4) A record of all votes taken, by individual members if there is a roll call.
- (5) Any additional information required under IC 5-1.5-2-2.5 or IC 20-12-63-7.

(c) The memoranda are to be available within a reasonable period of time after the meeting for the purpose of informing the public of the governing body's proceedings. The minutes, *if any*, are to be open for public inspection and copying. IC 5-14-1.5-4(b)(Emphasis supplied.)

The Open Door Law does not require minutes, which are generally more detailed and expansive than are memoranda. However, memoranda must be maintained, even for special meetings. This is perhaps the root of the misunderstanding of Mr. Roe that no minutes are required, although the law makes no distinction between regular and special meetings.

The special meeting on October 9 is a meeting of the District Board; accordingly, the District Board was required to maintain memoranda, in accordance with the Open Door Law. Furthermore, there is nothing in Indiana Code 14-33-5, concerning Conservancy District Boards of Directors, that contravenes the memoranda requirement in the Open Door Law. In fact, the law appears to require that even *minutes* be maintained by Boards of Conservancy Districts. See IC 14-33-5-19(b)(2)(requiring the Board to keep “a record of all transactions and minutes of all meetings in the office.”)

The District violated the Open Door Law by not maintaining memoranda for its October 9 special meeting. I recommend that the District create memoranda for the October 9 special meeting and disclose them to you.

With respect to the QAE bill, the District does not have a formal bill or invoice concerning these services. In the initial response to your request, the District treasurer indicated that Mr. Roe has the bills. Now the District is stating that no formal bill had been submitted. However, it is my opinion that, given your request and the minutes from the public meeting of October 2 characterizing the letter as a bill, it was incumbent on the District to give you a copy of the letter submitted to the Board. Mr. Roe stated that he thought he had given you this letter, but is not absolutely certain that he did. I recommend that you telephone Mr. Roe to let him know whether you received the letter. Mr. Roe will make the letter available if he has not done so.

CONCLUSION

For the foregoing reasons, I find that the District is required to maintain memoranda, and in failing to do so, violated the Open Door Law. I also find that the District violated the Access to Public Records Act if, and only if, the District failed to disclose the letter from QAE to the District.

Sincerely,

Karen Davis
Public Access Counselor

cc: Mr. Ronald Roe