

July 26, 2006

Dora Brown
6429 N. Kivett Road
Monrovia, IN 46157

Re: Formal Complaint 06-FC-106; Alleged Violation of the Access to Public Records Act by the Gregg Township Trustee

Dear Ms. Brown:

This is in response to your formal complaint alleging that the Gregg Township Trustee (“Trustee”) violated the Access to Public Records Act by denying you financial records of the Township. I find that you have not established a violation of the Access to Public Records Act.

BACKGROUND

You filed a formal complaint with the Office of the Public Access Counselor on June 26, 2006. In your complaint, you allege that the Trustee Carole Snyder has denied you access to public records on April 27, 2006, May 26, 2006, and June 23, 2006. You marked the box for “Open Door Law” violations, but did not allege in your narrative description any facts regarding exclusion from any meetings, and the Trustee, the sole public agency named in your complaint, is not a governing body subject to the Open Door Law. Therefore, I assume that you have not raised any Open Door Law violation upon which I would render an opinion. Finally, you requested priority status for your complaint, but alleged none of the circumstances for which priority status may be granted. *See* Ind. Admin. Code tit. 62, r. 1-1-3. Therefore, I have issued this opinion within 30 days of the date on which your complaint was filed.

You allege that the Trustee has denied you certain documents relating to expenditures and contracts involving the Gregg Township Volunteer Fire Department. You state that the Trustee has denied supporting receipts for the revenue, liability and fund accounts. You allege that she told you her counsel advised that the annual report filed with the Township Board should suffice. With respect to the contracts, you allege that the Trustee provided years 2003 and 2004, stated that she would provide 2005 at a later date, and told you that the Township did not have a

contract with the fire station for current year 2006. Thereafter, you requested copies of the notes and minutes supporting the 2006 verbal arrangement, but were denied.

I sent a copy of your complaint to the Trustee. Trustee legal counsel Stephen R. Buschmann sent a letter and supporting documentation. I have enclosed a copy of his letter for your reference. The Trustee denies having denied you any record in her possession. The Trustee stated that documentation of expenditures made by the Township Fire Department is not in her possession, and she has already produced receipts showing contract payments made to the Fire Department. The Fire Department is independent of the Trustee's office for purposes of the Access to Public Records Act, so Ms. Snyder is not required to secure documentation from another public agency.

Mr. Buschmann pointed out that with respect to your complaint relating to a June 23 denial, he believes this alleged denial relates to a written request dated June 18. That request was received by Ms. Snyder on June 22, and therefore was still considered open for response until seven days after receipt, or June 29, three days after you filed your complaint. He provided the response of the Trustee that was sent to you in a timely manner.

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). If the public agency receives a request for a record via U.S. Mail or facsimile, the public agency is required to respond within seven calendar days, or the request is deemed denied. IC 5-14-3-9(b). A public agency is not required to compile or create a record to satisfy a person's request for information. Rather, the APRA requires that a public agency make available its current records.

Under the Public Access Counselor's formal complaint process, a complaint regarding a denial of access must be filed within 30 days of the denial. IC 5-14-5-7. Therefore, with respect to your allegation that the Trustee denied you a record on April 27, your complaint is untimely. In any event, the Trustee states that she is not aware of any request for records around April 27.

The Trustee avers that she met with you on June 23 to provide copies of the records you requested on May 26. This meeting date followed a timely June 5 response, sent within seven days of the Trustee's receipt of your letter. The Township acknowledges that it offered you the annual report, but when you refused the report, the Trustee provided all the financial information that had been presented to the Township board at the April 18, 2006 hearing.

The Trustee is correct that any further records or documentation showing specific expenditures of the Fire Department, if not maintained by the Trustee, are not denied by the Trustee but simply are not public records of the Trustee. The Trustee is not required under the APRA to retrieve records held by a different entity. No violation of the Access to Public Records Act has been demonstrated regarding the receipts for revenue, liability, and fund accounts.

With respect to the fire contracts for 2005 and 2006, the Trustee states that no contracts have been entered into, so no documents exist. You allege that you requested notes and minutes to document the 2006 verbal agreement, but the Trustee maintains that the Trustee and Fire Department intend to enter into a 2006 contract once a decision is made on the pending emergency loan. Accordingly, all records relating to these agreements have been disclosed.

A public agency is not obliged under the APRA to create documents that do not exist. No violation of the Access to Public Records Act has been established on this part of your complaint. In addition, I have reviewed the Trustee's June 29 response to your June 18 request, and find that it meets the requirements of the Access to Public Records Act. In short, if you believe that the Trustee is withholding records that are filed with or maintained by the Trustee, you may bring a lawsuit to compel production of the records under IC 5-14-3-9(e).

CONCLUSION

For the foregoing reasons, I find that the Gregg Township Trustee has not violated the Access to Public Records Act.

Sincerely,

Karen Davis
Public Access Counselor

cc: Stephen L. Buschmann