

August 28, 2006

Sent Via Facsimile

Mr. John Emry
62 W. Jefferson Street
Franklin, IN 46131

Re: Formal Complaint 06-FC-129; Alleged Violation of the Access to Public Records Act by the Jackson Township Trustee

Dear Mr. Emry:

This is in response to your formal complaint alleging that the Jackson Township Trustee ("Trustee") violated the Access to Public Records Act by failing to disclose records to members of the Fruitdale Volunteer Fire Company.

BACKGROUND

You represent for purposes of this complaint, two members of the Fruitdale Volunteer Fire Company, Inc. ("Fruitdale"). The members visited the Trustee on July 5, 2006 and requested copies of contracts and advisory board minutes. You state that they were told their request was required to be in writing, but no form was provided to the requesters. On July 7, Fruitdale mailed a written request for the contracts and minutes to the Trustee. The certified mail certificate showed that the mail was delivered on July 10, 2006. You allege that no response of any kind was provided to Fruitdale as of the date of the complaint, July 27.

I sent a copy of your complaint to the Trustee. No written response to the complaint was proffered. However, my assistant has spoken with the Trustee by telephone. The Trustee maintains that the records have been sent to you. In follow-up by my office, you have stated that you had not received the records as late as August 21.

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. Ind. Code 5-14-3-3(a). A request for inspection and copying must be, at the discretion of the agency, in writing on or in a form provided by the agency. IC 5-14-3-3(a)(2). If a public agency receives a request via hand-delivery, the public agency must issue a response within 24 hours, or the request is deemed denied. IC 5-14-3-9(a). If the public agency receives a request via U.S. Mail or facsimile, the request is deemed denied if seven days elapse without a response from the agency. IC 5-14-3-9(b). There is no time prescribed for production of the records in the Access to Public Records Act. This office has stated that the records should be produced within a reasonable period of time.

Although the Trustee may require that a request for a record be in writing on or in a form provided by the Trustee, your unanswered allegation was that when Fruitdale entered the Trustee's office on July 5, the Trustee failed to provide the form that the Trustee uses for such requests. If the Trustee failed to provide a form, but refused to accept a request for records, the Trustee violated the Access to Public Records Act. In addition, the Trustee has not provided information to my office indicating that the Trustee had issued a response within seven days of receiving the mailed request for records.

I cannot determine for certain that the Trustee has delayed actually producing the records, which the Trustee has told my office he would provide to you. It is possible that, although mailed to you, the records have been lost. In any case, it is my opinion that if the Trustee has not provided contracts and advisory board minutes, the Trustee has violated the Access to Public Records Act by failing to produce records within a reasonable period of time. It has now been seven weeks since the Trustee received the second request for records. If the Trustee has not provided the records, I urge the Trustee to do so without further delay.

CONCLUSION

For the foregoing reasons, I find that the Jackson Township Trustee has violated the Access to Public Records Act.

Sincerely,

Karen Davis
Public Access Counselor

cc: Jeff Richardson