

September 7, 2006

Art Ray Newbury, Jr.  
89 E. Jackson Street  
P.O. Box 319  
Wheatfield, IN 46392

*Re: Formal Complaint 06-FC-135; Alleged Violation of the Access to Public Records Act by the Wheatfield Township Trustee*

Dear Mr. Newbury:

This is in response to your formal complaint alleging that Wheatfield Township Trustee ("Trustee") violated the Access to Public Records Act by refusing to give you records of the Township.

#### BACKGROUND

You alleged in your formal complaint that you gave the Trustee a request for records on July 31. The records you requested related to the Trustee's Annual Report for year ending December 1, 2005. You specifically requested invoices, bank checks and supporting documents for seven enumerated disbursements, and you listed the amounts of the disbursements. You also requested the accumulated fund balance as of June 30, 2006, and all disbursements from January 1, 2006 to June 30, 2006.

You claim that the Trustee refused, stating that the records belonged to the Township, and that you would never get the records. You told the Trustee that you merely wanted copies of the records, not the original records.

I sent a copy of your complaint to the Trustee. Trustee John S. Sumara responded, a copy of which is attached for your reference. Mr. Sumara stated that you were not specific with your request. He explained to you that the only time the records leave his office is when the auditors with the State of Indiana request them to complete their audit. He also informed you that only by a court order would the township records leave his office.

Your request for information was relating to the township assistance fund. Mr. Sumara admitted that it was unclear to what extent you were entitled to information from the township assistance files. Since some of the information is confidential such as applications, some of the information must be withheld.

## 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). A request for a record must identify the record with reasonable particularity. IC 5-14-3-3(a)(1). Under section 4 of the APRA, records must be withheld that are declared confidential by state statute. IC 5-14-3-4(a)(1). In addition to records that are confidential by state statute, there are other categories or types of records that are required to be withheld or may be withheld in the public agency's discretion. *See* IC 5-14-3-4(a) and (b). If a public record contains disclosable and nondisclosable information, the public agency shall, upon receipt of a request under the APRA, separate the material that may be disclosed and make it available for inspection and copying. IC 5-14-3-6(a).

If a public agency denies a written request for a record, the public agency is required to cite the exemption authorizing the agency to withhold the record, and the name and title or position of the person responsible for the denial. IC 5-14-3-9(c). If a person has been denied a record, he or she may file an action in the circuit or superior court of the county in which the denial occurred to compel the public agency to permit the person to inspect and copy the public record. IC 5-14-3-9(e). In any action filed, a court shall award reasonable attorney fees, court costs, and other reasonable expenses of litigation to the prevailing plaintiff if the plaintiff first sought and received an informal inquiry response or advisory opinion from the public access counselor. IC 5-14-3-9(i). In a court action under the APRA, the burden of proof is on the public agency to sustain its denial. IC 5-14-3-9(f).

Under IC 12-20-7-5, information that is received through the use of a consent form described in IC 12-20-7-1 and that is not a public record open to inspection and copying under any statute may be used only in connection with the following:

- (1) The administration of the township trustee's township assistance program.
- (2) The administration of public assistance programs that are administered by the division of family resources and county offices.

Based on the state statute above, the Trustee is correct that certain information contained in the township records regarding applicants of assistance is confidential. However, the Trustee may not deny records that do not fall within IC 12-20-7-5. It has been my opinion that the identity of township applicants is not confidential under IC 12-20-7-5, because the applicant's name is not obtained through the use of a consent form. The information that the Trustee receives through the use of the consent form would include only information that the Trustee obtains from someone other than the applicant.

You requested any invoices, bank checks and supporting documents for named individuals as well as what appears to be company names. It is unclear whether the named individuals are township assistance recipients. For those companies that have received disbursements from the Trustee, the underlying documentation you seek would clearly not be covered by the above state statute. Even for those records of disbursements to township assistance recipients, the Trustee bears the burden of showing that this information is confidential under IC 12-20-7-5.

I urge the Trustee to consider your written request for records anew. To the extent that part of your request is not reasonably particular because the Trustee is unsure what records you are seeking, it is the obligation of the Trustee to ascertain with more certainty what records you are requesting. I also suggest that the Trustee identify responsive records and determine whether any of the information contained in the records is confidential under IC 12-20-7-5 or are exempt under any other provision in section 4 of the APRA. To the extent that the records are partially nondisclosable, the Trustee is required to separate the matters that are nondisclosable, and to disclose the remainder of the record.

#### CONCLUSION

For the foregoing reasons, I find that the Wheatfield Township Trustee denied you records in violation of the Access to Public Records Act. The Trustee failed to cite the exemption that applies to the records as required under IC 5-14-3-9(c). In addition, the Trustee may have denied you records that are not exempt under section 4 of the APRA, in violation of the Access to Public Records Act.

Sincerely,

Karen Davis  
Public Access Counselor

cc: John S. Sumara