

September 18, 2006

Dora P. Brown  
6429 N. Kivett Road  
Monrovia, IN 46157

*Re: Formal Complaint 06-FC-146; Alleged Violation of the Access to Public Records Act by the Gregg Township (Morgan County) Volunteer Fire Department*

Dear Ms. Brown:

This is in response to your formal complaint alleging that Gregg Township Volunteer Fire Department (“Department”) violated the Access to Public Records Act by failing to produce copies of receipts relating to the Department’s tax returns for two years. I find that the receipts, if maintained by the Department, are disclosable public records that should be produced.

#### BACKGROUND

You filed your formal complaint with the Office of the Public Access Counselor, alleging that you had not received supporting receipts for revenues and expenditures of the Department relating to amounts reported on the Department’s IRS Form 990 for tax years 2003 and 2004. Your original request was for copies of the Department’s annual reports for the previous three full years, and the exemption application. This request was met with a request for clarification. Your response was to send the request for copies of receipts, which you sent on July 12, 2006.

I sent a copy of your complaint to the Department. Chief David J. Reese responded, a copy of which is enclosed for your reference. Chief Reese provided much background information regarding your concern about Department expenditures and your motivation, but I was not able to discern the response to your allegation that the Department had not responded to or supplied copies of the receipts you requested. However, it appears that Chief Reese may have believed that the IRS would have given you copies of any documentation that had accompanied the Department’s filing of the Form 990. Chief Reese enclosed a copy of the IRS letter dated April 2, 1999 confirming the organization’s status as a tax exempt organization. However, he

admitted that the original application to the IRS in 1958 is no longer maintained by the Department.

## ANALYSIS

Any person may inspect and copy the public records of any public agency during the agency's regular business hours, 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 describe the record with reasonable particularity. IC 5-14-3-3(a)(1). If a public agency believes the record is not described with reasonable particularity, the public agency should correspond with the requester to request clarification.

A response to a record request that the public agency receives by U.S. Mail is required within seven calendar days, or the request is deemed denied. IC 5-14-3-9(b). Although the public agency may enclose responsive records with its response, it may not be possible to locate and copy records within the seven-day timeframe. In that event, the public agency should provide the records within a reasonable period of time.

If the public agency intends to deny a request, the denial must be in writing and cite the exemption or exemptions authorizing the agency to withhold the record, and include the name and title or position of the person responsible for the denial. IC 5-14-3-9(c). If a public agency does not maintain the record, the public agency should so state. The public agency may not fail to disclose a record or make it available for inspection and copying because another public agency also maintains the record.

From the Department's response, it appears that the Department believes that the supporting documentation you were requesting would have been filed with the tax form, and would have been provided to you by the IRS with the tax Form 990. Whether this is an accurate assumption I cannot say. Even if documentation of expenditures or income disclosed on the Form 990 did accompany the tax filing, it was not consistent with the Access to Public Records Act for the Department to fail to disclose any documents responsive to your request. If the Department has supporting receipts for the specific expenditures you list in your July 12 request, the Department should arrange for you to inspect and copy the receipts, or state the exemption that applies to the receipts, if one exists.

The original 1958 application for tax exempt status does not survive, according to Chief Reese. Any failure to preserve a record that is required to be retained under IC 5-15 would violate IC 5-14-3-4(e). I have no opinion regarding whether the Department should or should not have maintained this record.

The Department is required to regulate any material interference with the regular discharge of the functions or duties of the public agency. IC 5-14-3-7(a). Therefore, the Department may arrange with you for periodic visits to the Department to view portions of the records if they are voluminous.

## CONCLUSION

For the foregoing reasons, I find that the Gregg Township Volunteer Fire Department is required to disclose any records that it maintains that are not exempt, and may not fail to disclose records that the Department believes may be available in some other agency.

Sincerely,

Karen Davis  
Public Access Counselor

cc: Chief David Reese