

November 27, 2006

Lela J. Quillen  
4690 Upper Patton Park Road  
Martinsville, IN 46151

*Re: Formal Complaint 06-FC-187; Alleged Violation of the Open Door Law and the  
Access to Public Records Act by the Gregg Township Trustee*

Dear Ms. Quillen:

This is in response to your formal complaint alleging that Gregg Township Trustee (“Trustee”) violated the Open Door Law and the Access to Public Records Act.

#### BACKGROUND

You filed a formal complaint on October 24, 2006 against the Gregg Township Trustee, Carole Snyder. You are a member of the Gregg Township Board. You state in the complaint that Ms. Snyder has met with members of the fire department, a certified public accountant, and an attorney without Township Board members present. You also claim that Ms. Snyder has not furnished information to the Board of the purpose or outcome of these meetings. You also claim that she has repeatedly failed to furnish copies of contracts that she has signed for the township without Board approval.

You list several other documents that she has not provided: receipts for laptop computers, names and account balances for two banks, a position description for family member providing services at the township’s expense, and books containing minutes of meetings that she has not returned to you, the Secretary of the Township Board. Finally, you complain that Ms. Snyder has denied access to her house on which the township pays rent for use as the Trustee’s office.

I sent a copy of your complaint to Ms. Snyder, who responded by letter, a copy of which is attached. Ms. Snyder essentially disputes that she has denied you access to the above records. All documents resulting from her meetings with the fire department, attorney and CPA have

been provided to the Board, including the budget, which was provided to the Board at the September 19 meeting. Beyond those records, Ms. Snyder would need to know what specific documents you are requesting. As for the mowing contracts, the Trustee is permitted to enter into agreements without board approval as long as they fall within the budgeted amounts, which they do. Finally, minutes, receipts and other requested items are in the possession of the State Board of Accounts as stated previously. As for the bank accounts, you have information on all the accounts that exist.

## ANALYSIS

The Public Access Counselor has the duty to respond to informal inquiries concerning the public access laws, and to issue advisory opinions to interpret the public access laws upon the request of a person or a public agency. IC 5-14-4-10(5) and (6). “Public access laws” refers to Indiana Code 5-14-1.5, Indiana Code 5-14-3, or any other state statute or rule governing access to public meetings or public records. IC 5-14-4-3. Some of your complaints do not concern the public access laws; consequently they are beyond the purview of the Office of the Public Access Counselor. In particular, your allegation that Ms. Snyder has denied access to her house to members of the Township Board does not set out a violation of the access laws. Also, your allegation that Ms. Snyder has met with the fire department, a CPA, and an attorney without Township Board members present does not set out a violation of the access laws, if you mean to suggest that Ms. Snyder is required to specially invite Township Board members to all meetings regarding township business.

However, you have marked “Open Door Law Violation” in the space provided on the complaint form, and the meetings of the Trustee with the fire department, CPA and attorney are the only factual allegations that you make resembling any Open Door Law allegation. Therefore, I would note that the Open Door Law provides that all meetings of governing bodies of public agencies are required to be open at all times for the purpose of permitting members of the public to observe and record them. IC 5-14-1.5-3(a). A “governing body” is *two or more* individuals who are a public agency that is a board or commission, a board or commission of a public agency, or a committee appointed directly by the governing body or its presiding officer. *See* IC 5-14-1.5-2(b). Hence, for a meeting to be subject to the Open Door Law, the meeting must have involved a governing body, not a single individual like a Township Trustee. If you mean to allege that the Trustee must post notice and hold meetings with the fire department, CPA, and attorney in public, your allegation has no merit.

To address your allegations concerning the township records, I must assume without knowing that you have requested the records from Ms. Snyder. In particular, I note that your complaint is that Ms. Snyder has not furnished information to the Board regarding the purpose or outcome of the above meetings. Again, although Ms. Snyder may have some obligation under Title 36 to automatically furnish information to the Board at regular intervals, the failure to do so does not implicate the Access to Public Records Act, in my opinion. In other words, a public agency cannot violate the Access to Public Records Act with respect to any record for which a request has not been received by the public agency. I will assume for purposes of this opinion that you have made requests for all the records referred to in your complaint.

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 a public agency receives a request for a record in person or by telephone, the public agency is required to respond within 24 hours or the record is deemed denied. IC 5-14-3-9(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 request for a record must identify the record requested with reasonable particularity. IC 5-14-3-3(a).

The Trustee should have responded to your various requests within 24 hours or seven days, to acknowledge receipt of your requests and to state how or when she intended to comply. The Trustee should state whether she maintains the record, or whether it is temporarily unavailable because the original records are in the custody and control of the State Board of Accounts. She should also attempt to ascertain when the records that are temporarily out of her custody and control will be available.

In the Trustee’s response, she states that she is authorized to enter into contracts without Board approval under certain circumstances. However, the Trustee does not say specifically whether the mowing contract has been provided or not, or whether there is a formal agreement or document for the mowing service. If a public agency does not have a record that is responsive to a request, the public agency should clearly so state. If any document memorializing the mowing contract exists, it should be made available for inspection and copying if it has not been made available. It is beyond my authority to respond to any allegation that Ms. Snyder has exceeded her authority to enter into a contract without Board approval.

Ms. Snyder states that you have received all bank account information that exists.

Ms. Snyder omits any mention of the position description for the family member providing services at the township’s expense. Under the APRA, a public agency is required to disclose certain information from a personnel file of a public employee, including:

- (A) The name, compensation, job title, business address, business telephone number, job description, education and training background, previous work experience, or dates of first and last employment of present or former officers or employees of the agency;
- (B) Information relating to the status of any formal charges against the employee; and
- (C) The factual basis for a disciplinary action in which final action has been taken and that resulted in the employee being suspended, demoted, or discharged.

IC 5-14-3-4(b)(8). Accordingly, if the Trustee has a record that is responsive to your request for the position description, this would be a disclosable public record that should be given to you.

In addition, a public agency that has received a request for a record that has not identified the record with reasonable particularity is required to contact the requester to seek clarification. Ms. Snyder states that she is unsure what documents you are requesting. Ms. Snyder should ascertain what documents you are requesting if some of your requests have not been specific.

It is apparent that there is a dispute concerning whether all disclosable records of the Trustee have been provided to the Township Board at the Board's request. I cannot determine what the true facts are; I can only provide guidance with respect to the requirements of the APRA. If you believe that the Trustee has not provided records that you have requested, your recourse is to file a lawsuit to compel the Trustee to disclose the records. *See* IC 5-14-3-9(e).

#### CONCLUSION

For the foregoing reasons, I find that the Trustee has not violated the Open Door Law by meeting with the fire department, CPA and attorney without the Township Board present. If the Trustee has received a request for records and the Trustee has neither responded nor provided the records without justification, the Trustee has violated the Access to Public Records Act.

Sincerely,

Karen Davis  
Public Access Counselor

cc: Carole Snyder