

November 27, 2006

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

Re: Formal Complaint 06-FC-190; 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 the Wheatfield Township Trustee ("Trustee") violated the Access to Public Records Act by failing to respond to your requests for records or information. I find that the Trustee is required to respond to requests for records within 24 hours.

BACKGROUND

Your complaint consists of two parts. In your first complaint, you state that the Trustee John Sumara has not responded to your request for information in reference to the annual reports of the Trustee:

- Verification of what is stored in the Kankakee Valley Rental storage unit and why;
- Copies of checks for enumerated expenditures;
- Proof of cash balances and investment balances in the following accounts: Township, Township Assistance, Firefighting, Cumulative, Dog and Rainy Day.

You sent a second complaint on November 3, 2006, alleging that Mr. Sumara has not responded to your request for information regarding how many fire trucks the township owns, the types of trucks owned by the township, where the trucks are located, and if the truck are not at the fire station, where and why they are located elsewhere, who gave permission to relocate the trucks if applicable, and how many and the whereabouts of all "SCBAs" and turn out gear.

For both your complaints, you state that Mr. Sumara is difficult to reach because monthly meetings of the Township Board have recently been cancelled and you must tape your record requests to the door of his home.

I sent a copy of your complaints to the Trustee. Mr. Sumara responded by letter, a copy of which is attached. He responded concerning the difficulty you have in reaching him. He stated the reason that meetings have been cancelled, and explained that it is not always clear which Arthur Newbury is requesting records, since the township has two individuals with the same name. Mr. Sumara also explained that at the time your request was taped to his door, the records were being audited and were not in his possession. Mr. Sumara provides some of the information concerning your first request, but not information regarding the fire trucks.

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 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). 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.

You provided the request for information at Mr. Sumara's home, which is apparently the only place of business of the Trustee. Therefore, you were entitled to a response to your request within 24 hours, plus time to receive a written response in the mail. Mr. Sumara does not directly address the response time, but states only that he did not have some of the records due to the audit, and that he was not sure which Art Newbury was requesting records. The copy of your request does not bear any information indicating your address or telephone number. I recommend that you provide to the Trustee information about how to contact you so that a response or the records may be provided. Outside of that need, the Trustee should not be concerned with which Art Newbury is requesting the records, since any person may inspect and copy public records of the Trustee.

If the Trustee did not have custody or control of the records temporarily, the Trustee need only have advised you of this, and stated when he expected to be able to retrieve the records. Failure to respond within 24 hours to your hand-delivered request was a violation of the Access to Public Records Act.

I also write to point out that some of the requests are for information that may not be a matter of documentation, such as why fire trucks are stored away from the fire station and why certain items are stored in a storage unit. The Trustee should consider whether the answers to your questions are answered within his records, and then disclose them to you. But if no records are responsive, the Trustee is not required to provide the answers to you by creating a record, under the Access to Public Records Act. If no record exists that responds to your specific request, the Trustee should clearly so state.

I urge the Trustee to respond to your second request for records regarding the fire trucks, in conformance with the guidance in this advisory opinion.

CONCLUSION

For the foregoing reasons, I find that the Wheatfield Township Trustee did not respond to your requests for records, in violation of the Access to Public Records Act.

Sincerely,

Karen Davis
Public Access Counselor

cc: John Sumara