

May 5, 2006

Robert E. Miller
24 Victoria Circle
LaPorte, IN 46350

Re: Formal Complaint 06-FC-62; Alleged Violation of the Access to Public Records Act by the Center Township (LaPorte County) Trustee

Dear Mr. Miller:

This is in response to your formal complaint alleging that the Center Township Trustee (“Trustee”) violated the Access to Public Records Act by failing to disclose the diary entries on legal bills maintained by the Trustee. I find that the Trustee did not violate the Access to Public Records Act.

BACKGROUND

You mailed on March 10, 2006 a request to the Trustee for copies of all itemized billing statements that resulted in payments to two law firms. The total for the bills was about \$7,000.00. The expenditures were listed in the 2005 Annual Report of the Trustee and were charged as disbursements from the firefighting fund. You specified in this request that you wanted the original itemized billing statement in their entirety, listing dates of service as well as descriptions of services rendered; previous requests had garnered redacted copies.

You provided me with the response letter of the Trustee, dated March 20, 2006. The Trustee Deb Arnold wrote to enclose copies of the itemized statements showing dates of services, hours of service, and amounts paid. She claimed that the description of legal work performed that is itemized on the statements is subject to nondisclosure as attorney-client privileged material under IC 5-14-3-4(a)(8). You followed that letter with this complaint.

In your complaint, you allege that although the Trustee has claimed attorney-client privilege, you as a board member and a resident are entitled to see the description of services provided with taxpayer monies. It is your contention that services paid with taxpayer funds are

not subject to confidentiality under the attorney-client privilege, the township (and therefore the board) is the client, and the Board needs to know if the spending is appropriate.

I sent a copy of your complaint to the Trustee. The Township Attorney, Stephen Buschmann, wrote in response that the billing statements contained redactions of the descriptions of services to preserve the attorney-client privilege and to protect attorney work product. He indicated that the law firms were retained by the Trustee under the authority vested in the Trustee under Ind. Code 36-6-4-4(2). The redacted items fit within the exemption for attorney client privilege, as records declared confidential by state statute (IC 5-14-3-4(a)(1)), and for attorney work product, (IC 5-14-3-4(b)(2)).

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”). IC 5-14-3-3(a). Certain public records are excepted from section 3 of the APRA and may not be disclosed by a public agency, unless access to the records is specifically required by a state or federal statute or is ordered by a court under the rules of discovery. IC 5-14-3-4(a). Records declared confidential by state statute are excepted under IC 5-14-3-4(a)(1). Public records excepted from disclosure at the discretion of a public agency include the work product of an attorney representing, pursuant to an appointment by a public agency, a public agency or an individual. IC 5-14-3-4(b)(2). “Work product of an attorney” is defined as “information compiled by an attorney in reasonable anticipation of litigation” and includes legal research, reports, or memoranda to the extent that each contains the attorney’s opinions, theories, or conclusions. IC 5-14-3-2(p).

Indiana Code 34-46-3-1 provides that communications between an attorney and her client are confidential. Hence, if the diary entries on the billing statements contain or reveal communications between an attorney and the client that are within the privilege, those entries may be withheld under IC 5-14-3-4(a)(1). In addition, any diary entries that reveal work product of an attorney may be withheld in the public agency’s discretion. IC 5-14-3-4(b)(2).

You do not directly assail these authorities, other than to provide an opinion letter from an attorney that legal bills of a township trustee are not exempt under attorney work product. The written opinion does not cite any authority for his position, and in fact, does not specifically state that no part of the legal bills may be excepted from disclosure, only that the bills filed with the Trustee are not exempt. Your contention remains that the bills in their entirety are disclosable to you for two reasons: the fees were paid with tax dollars, and you as a Board member are required to approve the expenditures and are a client of the township attorney.

The fact that the expenditures were from taxpayer dollars does not mean that a properly asserted exemption is a nullity. The information that you received shows the amount of the expenditures, to whom, and a specific time period. Although you might wish to know in detail what legal services were rendered, it is this information, if revealing a statutory privilege, that is protected under the APRA. The APRA does not state that the exemptions from disclosure are inapplicable when the information is secured with tax monies.

With respect to your contention that as a Board member you should be privy to the attorney-client communications with the Trustee, I regard your contention as a non-starter. While you may believe that as a Board member you have the same right as the Trustee to view attorney-client privileged material, your theory is grounded on your membership on the township board, and your claim of right is not that of any member of the public. Therefore, your right to the material is not based on the APRA, but rather on contractual principles, which I am not at liberty to issue an opinion concerning. Such an opinion would constitute legal advice, and I am not in an attorney-client relationship with you or the Board.

If a statute *specifically* requires access to a record, then the condition precedent to nondisclosure for confidential records would not be met, and the exemption for attorney-client privileged communications asserted by the Trustee would not be appropriate. *See* IC 5-14-3-4(a). Therefore, I have considered whether a state statute specifically requires access to the township board of the unredacted itemized legal statements.

Under IC 36-6-6-9(b), the legislative body may send for persons, books, and papers necessary in the examination of the annual report, at the annual meeting to consider the annual report of the Trustee. Under IC 36-6-4-6(b) for each sum of money paid by the executive, the financial and appropriation record must show:

- (1) the date it was paid;
- (2) to whom it was paid;
- (3) from what account it was paid; and
- (4) why it was paid.

(c) The state board of accounts shall prescribe the form of the financial and appropriation record.

Under IC 36-6-4-13(a), the township trustee is required to prepare an abstract of receipts and expenditures:

- (1) showing the sum of money in each fund of the township at the beginning of the year;
- (2) showing the sum of money received in each fund of the township during the year;
- (3) showing the sum of money paid from each fund of the township during the year;
- (4) showing the sum of money remaining in each fund of the township at the end of the year.
- (5) containing a statement of receipts, showing their source; and
- (6) containing a statement of expenditures, showing the combined gross payment, according to classification of expense, to each person.

I do not regard the aforementioned authorities to constitute a state statute specifically requiring that the legal bills in their entirety be disclosed to the township board.

CONCLUSION

For the foregoing reasons, I find that the Center Township Trustee did not violate the Access to Public Records Act.

Sincerely,

Karen Davis
Public Access Counselor

cc: Stephen Buschmann