

March 19, 2008

James Franklin
3165 Upper Patton Park Road
Martinsville, Indiana 46151

Re: Formal Complaint 08-FC-73; Alleged Violation of the Access to Public Records Act by the Morgan County Gregg Township Trustee

Dear Mr. Franklin:

This advisory opinion is in response to your formal complaint alleging the Gregg Township Trustee (“Trustee”) violated the Access to Public Records Act (“APRA”) (Ind. Code 5-14-3) by denying you access to records. I have enclosed a copy of the Trustee’s response to the complaint for your reference. It is my opinion the Trustee has not violated the APRA.

BACKGROUND

You submitted a request for access to records maintained by Trustee by letter dated January 27, 2008. You mailed the request to the Trustee’s home. You indicate the Trustee performs her township work from her home, and the township pays rent to her for the use of her home. You allege that when you did not receive a response to the request, you telephoned the Trustee at her home to inquire about the status. The Trustee indicated that you need to submit a request to the township’s post office box, as she did not recognize a request sent to her home. You mailed this complaint on February 29, and I received it on March 3.

The Trustee responded to the complaint by letter dated March 10 from attorney Stephen Buschmann. Mr. Buschmann contends the Trustee did not receive the original mailed request until she received a copy from this office as an attachment to the complaint we received on March 3. Mr. Buschmann further indicates the Trustee has now sent you the requested records and includes a copy of the undated response from the Trustee to you.

Regarding the address to which the request should have been directed, Mr. Buschmann contends that the business address of the Trustee is a post office box address and claims you are aware of this address, as you have submitted requests for records in the past. In addition, requests may be sent to the Township at the fire station address, which is listed in the telephone directory under “Gregg Township Trustee.” Mr. Buschmann provides further information regarding the

telephone call you made to the Trustee's home, during which you spoke to the Trustee's husband rather than the Trustee herself. Mr. Buschmann points to I.C. § 12-20-5.5-3(a), which requires the township to have a published telephone number in the name of the township. State statute also allows the township to utilize the trustee's home for office space and requires the township to pay for the space.

ANALYSIS

The public policy of the APRA states, "(p)roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information." I.C. § 5-14-3-1. The Trustee is clearly a public agency for the purposes of the APRA. I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy the public records of the Trustee during regular business hours unless the public records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. I.C. § 5-14-3-3(a).

A request for records may be oral or written. I.C. §§ 5-14-3-3(a), 5-14-3-9(c). If the request is delivered by mail or facsimile and the agency does not respond to the request within seven days of receipt, the request is deemed denied. I.C. § 5-14-3-9(b).

Here the Trustee asserts she did not receive your request. While a public agency has a duty to respond to a written request for access to records within seven days of receipt of the request, an agency cannot respond to a request she did not receive. Therefore, if the Trustee did not receive your request, she did not violate the APRA by not responding. It is my understanding the Trustee has now responded to your request.

Your complaint also addressed the Trustee's use of her home for township business and refusal to accept requests for access to records at her home address. Certainly I.C. § 36-6-8-3 allows the Trustee to use part of her home for an office and requires the township to pay her for the use of the space. But nothing in that statute or the APRA requires the Trustee to conduct all business through that office address.

The public policy of the APRA says that providing persons with information is an essential function of a representative government and an integral part of the routine duties of public employees. I.C. § 5-14-3-1. Certainly any actions or attempts to frustrate that policy would violate the spirit of the APRA. And if in this case the Trustee's only point of contact was through her home address and home telephone number, it would be my opinion she must accept requests through that address. Here, though, the Trustee has two business addresses at which requests for access to records will be accepted, a post office box and the fire station. It is not difficult for a member of the public to ascertain the official address, since the fire station address is listed in the telephone directory under the heading "Gregg Township Trustee."

Further, Indiana law requires the township to maintain a published telephone number in the name of the township. I.C. § 12-20-5.5-3(a). The Trustee has provided evidence that the township maintains a telephone number in the name of the township, and that telephone number rings at the home office of the Trustee. It is my opinion it is reasonable for the Trustee to direct

official communications to the official address and telephone number of the township and away from her home address and telephone number. This is also a practical approach to conducting township business because it provides a contingency in the case that the Trustee is unable to perform her duties for any reason. The work of the township can be continued by someone else, without the disruption of changing the official address from home address to home address. Rather, it provides one address (or in this case two options) and telephone number at which the public at large can always reach the Trustee, regardless of who is performing the duties.

CONCLUSION

For the foregoing reasons, it is my opinion the Trustee has not violated the APRA.

Best regards,



Heather Willis Neal
Public Access Counselor

cc: Carol Snyder, Gregg Township Trustee