



# STATE OF INDIANA

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October 13, 2009

Mr. Rory Lee Hill  
1804 Kapok St. SW  
DeMotte, IN 46310

*Re: Formal Complaint 09-FC-205; Alleged Violation of the Access to Public Records Act by the Keener Township Board*

Dear Mr. Hill:

This advisory opinion is in response to your formal complaint alleging the Keener Township Board (“Board”) violated the Access to Public Records Act (“APRA”), Ind. Code § 5-14-3-1 *et seq.*, by denying you access to email records that it received in the course of public meetings. For the following reasons, my opinion is that the Board violated the APRA if it refused to provide you with public records that it received unless the Board can cite some other exception to the APRA that would justify withholding the records.

## BACKGROUND

In your complaint, you allege that you requested information from the chairman of the Keener Township Board, John Boissy, that he submitted to the Board during the Board’s public meetings. You allege that Mr. Boissy also gave copies of these records to the local newspaper but has refused to provide them to you. You seek correspondence, faxes, electronic mail (“email”), or other communications between Senator Hershman, St. Mary’s Medical Center, the Indiana Attorney General, the State Board of Accounts, and any public agency that has such information.

You further allege that Mr. Boissy told you that he would not produce email messages to you that he sent on his personal computer because, according to him, those messages were sent from his own equipment and in the course of his actions as a private citizen. You state that you agree with that assertion, but only “as long as the information is not used by the said taxpayer as an elected official carrying out his duties, which is the issue here.” You argue that when Mr. Boissy brought the records into a public meeting, he made them a matter of public record because he was no longer acting as a taxpayer but as an elected official. Finally, you state that all you are “looking for is the same information that Mr. Boissy has made public to everyone else.”

My office forwarded a copy of your complaint to Mr. Boissy. His response is enclosed for your reference. Mr. Boissy responds to your complaint by saying that the information that you are asking for was “all done on my own personal computer with an e-mail account not paid for by the public agency but by me.”

#### 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 Board does not dispute that it is 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 Board 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).

The issue is whether Mr. Boissy’s purportedly “personal” email messages became public records once he submitted them to the Board. Under APRA, a “public record” is

any writing, paper, report, study, map, photograph, book, card, tape recording, or other material that is created, received, retained, maintained, or filed by or with a public agency and which is generated on paper, paper substitutes, photographic media, chemically based media, magnetic or machine readable media, electronically stored data, or any other material, regardless of form or characteristics.

I.C. § 5-14-3-2(n). Under this definition, Mr. Boissy’s personal email messages became public records once they were received by or filed with the Board. Thus, to the extent that the Board received email messages from Mr. Boissy, they would be public records disclosable under APRA unless the Board can cite an exception to APRA that would justify withholding them.

#### CONCLUSION

For the foregoing reasons, it is my opinion that the APRA requires the Board to produce email messages that have been “created, received, retained, maintained, or filed by or with it” unless it can cite a specific exception to the APRA that would justify its refusal to do so.

Best regards,



Andrew J. Kossack  
Public Access Counselor

Cc: John Boissy, Keener Township Board