



# STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

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October 29, 2009

Ms. Dorothy Boissy  
9720 N. 700 W.  
Demotte, IN 46310

*Re: Formal Complaint 09-FC-220; Alleged Violation of the Access to  
Public Records Act by Keener Township*

Dear Ms. Boissy:

This advisory opinion is in response to your formal complaint alleging that Keener Township (the "Township") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.*, by denying you access to public records. For the following reasons, it is my opinion that the Township did not violate the APRA.

## BACKGROUND

In your complaint, you allege that you hand delivered a public records request to the Township's trustee on September 11, 2009. You requested "information covered by IC 16-31-2-11(d)." In response, the trustee mailed you a letter dated September 11, 2009, stating that she believed the information you requested was confidential. The trustee also stated in her letter that she contacted the "Public Access and Health and Human Services civil right office" and was awaiting their responses. You then state that you were able to retrieve a great deal of the information "in less than 30 minutes." You state that the "dispatch information" for the month of February, 2009 is on a computer software program and I believe she has had enough time to respond to my request. Since I haven't heard from her, I'm assuming that she again is denying my request." You then state that the trustee provided you with dispatch information for the month of June 2009, but that "was not completely helpful because one report was listed in minutes and not times. IC 16-31-2-11(d) lists items as times."

My office forwarded a copy of your complaint to the Township for a response. Keener Township Trustee Diana Haberlin responded on behalf of the Township. Her letter is enclosed for your review. In it, she states that as the trustee, she oversees the Township ambulance service, but because of the Health Insurance Portability and Accountability Act ("HIPAA") such information is kept on a separate computer in the Emergency Service Department and only a few employees have access to the information. The software program separates information from the run reports in a

different format, but gives the date and time, reason for request, name of facility, and arrival and departure times. The arrival and departure times are in minutes, but one can gather the arrival and departure times from that information. Ms. Haberlin further responded that she and EMS Chief David Ferris decided to deny your request for actual run reports because the disclosure of those records would violate HIPAA. Ms. Haberlin claims that she has already provided you with all public information allowable from I.C. § 16-31-2-11(d). Ms. Haberlin adds that as to your request for “dispatch information” for the month of February 2009, she never denied such request and, in fact, told you that she would provide the information within two weeks of your September 11, 2009, request. Ms. Haberlin states that such information was copied and sent to you within two weeks on the 24<sup>th</sup> of September, but you had already submitted your complaint to this office that same day.

## ANALYSIS

The public policy of the APRA states that “(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. Any person has the right to inspect and copy the public records of a public agency during regular business hours unless the public records are exempt from disclosure as confidential or otherwise nondisclosable under the APRA. I.C. § 5-14-3-3(a). The Township does not dispute that it is a public agency for the purposes of the APRA. I.C. § 5-14-3-2.

Initially, I note that many of these issues underlying this complaint were addressed by my predecessor in a previous advisory opinion. *See Opinion of the Public Access Counselor 09-FC-78*. I hereby incorporate her analysis by reference to the extent it applies to the accessibility and confidentiality of the records sought here.

Moreover, some of your complaints are moot due to the fact that the Township provided you with the dispatch information on September 24, 2009, which was within the two week timeframe that Ms. Haberlin gave you for producing the records. There are no prescribed timeframes when the records must be produced by a public agency. The Public Access Counselor has stated repeatedly that records must be produced within a reasonable period of time, based on the facts and circumstances. Under these circumstances, it is my opinion that the Township acted reasonably when it produced your records within two weeks.

Further, it is unclear why you stated in your complaint that you “haven’t heard from [Ms. Haberlin], so I’m assuming she is again denying my request,” when you had indeed heard from Ms. Haberlin and had been assured that you would receive the records within two weeks. In my opinion, your complaint was filed prematurely. It appears that this issue could have been avoided if you had simply afforded the Township an opportunity to produce the records within the two week timeframe.

The only remaining issue in your complaint is your allegation that the Township violated the APRA by providing you with records that were “listed in minutes and not times.” However, it appears that the times are discernable from the records provided to you. In her response, Ms. Haberlin states that “you must add the minutes to get the arrival and departure times. Our software does not generate times.” Nothing in the APRA requires an agency to create a record in response to a public records request. If the Township does not possess records with the times listed on them, the Township is under no obligation to create and provide you with such records.

#### CONCLUSION

For the foregoing reasons, it is my opinion that the Township did not violate the APRA when it denied your request.

Best regards,

A handwritten signature in black ink that reads "Andrew J. Kossack". The signature is written in a cursive style with a large, sweeping initial 'A'.

Andrew J. Kossack  
Public Access Counselor

Cc: Diana Haberlin, Keener Township Trustee