



STATE OF INDIANA

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December 17, 2009

Ms. Sonja Graf
Ms. Dora Brown
6364 N. Kivett Road
Monrovia, IN 46157

Re: Formal Complaint 09-FC-275; Alleged Violation of the Access to Public Records Act by the Gregg Township Trustee

Dear Mses. Graf and Brown:

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

BACKGROUND

In your complaint, you allege that on October 26, 2009, you submitted a public records request to the Trustee. You sent one to the Trustee's business address and one to the Trustee's home. According to your complaint, the Trustee had not responded to you as of November 14, 2009.

My office forwarded a copy of your complaint to the Trustee for a response. The response of attorney Stephen R. Buschmann is enclosed for your review. Mr. Buschmann states that the Trustee did, in fact, respond to your letter on or about October 30, 2009, after receiving your request on October 25th. The Trustee's October 30th letter indicated to you that the Trustee would produce all existing, non-confidential documents to you and noted that it would take at least a month to gather the documents and redact/remove any privileged documents or information. The Trustee gathered sixty-three (63) pages of documents and redacted all confidential information. On December 10, 2009, the Trustee sent you another letter notifying you that the documents were available for you to inspect and copy.

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 Trustee does not contest 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 Trustee’s public records during regular business hours unless the records fall within one of the APRA’s exceptions to disclosure. I.C. § 5-14-3-3(a).

The APRA provides that an agency’s failure to respond to a written request within seven (7) days constitutes a denial of access. I.C. § 5-14-3-9(b). Under the APRA, a public agency may deny a request if: (1) the denial is in writing or by facsimile; and (2) the denial includes: (A) a statement of the specific exemption or exemptions authorizing the withholding of all or part of the public record; and (B) the name and the title or position of the person responsible for the denial. I.C. § 5-14-3-9(c). Here, the Trustee maintains that it responded to your request within five (5) days of receipt. In that case, the Trustee did not violate section 9(b) of the APRA.

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. Considering factors such as the nature of the requests (whether they are broad or narrow), how old the records are, and whether the records must be reviewed and edited to delete nondisclosable material is necessary to determine whether the agency has produced records within a reasonable timeframe. Section 7 of the APRA requires a public agency to regulate any material interference with the regular discharge of the functions or duties of the public agency or public employees. I.C. §5-14-3-7(a). However, Section 7 does not operate to deny to any person the rights secured by Section 3 of the Access to Public Records Act. I.C. §5-14-3-7(c). Given the voluminous nature of your request and the fact that many of the documents that the Trustee produced to you required redaction of confidential information, it is my opinion that the Trustee produced the documents to you within a reasonable amount of time.

In sum, the actions of the Trustee do not indicate a denial of access. The Trustee responded to your request in a timely manner and produced non-confidential records within a reasonable time. I also note that you have filed numerous complaints with this office regarding the Trustee and Gregg Township. You have also attempted to make requests by mailing them to officials’ homes rather than the agencies’ official addresses, which previous public access counselors and I have opined are not valid requests. *See Opinion of the Public Access Counselor 08-FC-73*. I remind you that my predecessor, Counselor Neal, informed you that the public access counselor’s complaint process is not a forum for complainants to air personal grievances. To the extent that future complaints

repeatedly allege the same violations or are otherwise groundless, those complaints will be rejected pursuant to Ind. Code § 5-14-5-6. If you disagree with an opinion from this office or believe a public agency is persisting in denying your public access rights in spite of an opinion from this office, I leave you to your remedies before a court pursuant to Ind. Code § 5-14-3-9(e).

CONCLUSION

For the foregoing reasons, it is my opinion that the Trustee did not violate the APRA.

Best regards,



Andrew J. Kossack
Public Access Counselor

cc: Stephen R. Buschmann, Thrasher Buschmann Griffith & Voelkel, P.C.