



# STATE OF INDIANA

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January 22, 2010

Ms. Cheryl Ann Munson  
6707 W. Rock East Road  
Bloomington, IN 47403

*Re: Formal Complaint 10-FC-18; Alleged Violation of the Access to Public Records Act by the Indian Creek Township Trustee*

Dear Ms. Munson:

This advisory opinion is in response to your formal complaint alleging the Indian Creek Township Trustee ("Trustee") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.*, and the Open Door Law ("ODL"), Ind. Code § 5-14-1.5-1 *et seq.*, by denying you access to public records.

## BACKGROUND

According to your complaint, the Trustee's policy is to allow examination of financial records for the previous month only one day per month on the fourth Tuesday of each month. The Trustee scheduled a board meeting for January 14, 2010, but refused to provide you with access to the financial records that you needed to review prior to the board meeting. You state that you need this information in order to carry out your duties as a public official, including your vote to approve or not to approve the township's 2009 financial expenditures.

You also allege that the Trustee failed to comply with the ODL's notice requirements regarding the township's board meetings because the notices she published regarding the January 14<sup>th</sup> meeting did not include the time of that meeting.

The Trustee's response to your complaint is enclosed for your review. The Trustee states that she has "tried to be compliant" with your requests for access. She attached several pieces of correspondence showing her attempts to schedule appointments for you to review records and alleges that you failed to attend several such meetings. She further states that she did not receive bank statements for her annual report until January 6<sup>th</sup>. As soon as she received that information, she began compiling the information for an individual who would enter the information into new state software because the township does not own due to its cost. The Trustee claims that you were "made aware at the 2010 budget meeting that [the Trustee] would be working with another township on the annual

report due to the cost of the software and our township's budget." She claims that you did not request access to the records until January 11<sup>th</sup> for a January 12<sup>th</sup> meeting. She states that she was unable to accommodate that request "due to already scheduled appointments for that day and trying to get material ready for the computer input." She claims that you did not appear for an inspection appointment on December 18, 2009, but if you had you would have had access to all financial information for 2009 except for the last half of December.

Regarding the notice, the Trustee claims that the newspaper failed to include the time of the last meeting in the advertisement. The Trustee states that she "did not check the paper because that came out at the time I was burying my father and I did not realize it until it was too late to re-advertise."

## 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. 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 excepted from disclosure as confidential or otherwise nondisclosable under the APRA. I.C. §5-14-3-3(a).

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 Trustee's public records 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 made orally or in person at the office of the agency and the agency does not respond to the request within 24 hours of receipt, the request is deemed denied. I.C. §5-14-3-9(a). If the request is delivered by mail, facsimile, or electronic mail 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).

A response could be an acknowledgement that the request has been received and information regarding how or when the agency intends to comply. There are no prescribed timeframes when the records must be produced by a public agency. A public agency is required 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). The public access counselor has stated that records must be produced within a reasonable period of time, based on the facts and circumstances. Consideration of 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 are necessary to determine whether the agency has produced records within a reasonable timeframe

I note that my predecessor, Counselor Neal, issued two previous advisory opinions in response to disputes between you and the Trustee: *Opinion of the Public Access Counselor 07-FC-343* (Dec. 5, 2007), and *Opinion of the Public Access Counselor 09-FC-159* (Aug. 12, 2009). Both opinions are relevant to the circumstances of the current dispute.

In her 2007 opinion, Counselor Neal opined that the Trustee had not violated the APRA when she scheduled a time each month to respond to public records requests. In that matter, the Trustee indicated that she made that decision due to limited resources and numerous requests for records. Counselor Neal reasoned,

While I am not willing to suggest that once a month is always an appropriate interval for responding to requests for access to records, it may be appropriate here when considering the factors. The Trustee is an office with limited personnel resources, the requests to the office have been so voluminous as to cause a copy machine to malfunction, the Trustee maintains many records that are received or created on a monthly basis, and the Trustee at times must leave the office to make the requested copies. Being mindful of the charge in Section 7 to regulate any material interference with the regular discharge of duties while not denying access to records, I would agree that at this point this is a reasonable interval for responding to requests for records.

*Opinion of the Public Access Counselor 07-FC-343* at 3.

In her 2009 opinion, Counselor Neal came to the opposite conclusion. Counselor Neal issued that opinion following additional disputes over the Trustee's once per month policy:

Regarding the Trustee's insistence that you may only inspect records on the one day per month assigned to you, it is my opinion the Trustee has misunderstood my opinion in response to your Formal Complaint 07-FC-343. I issued an opinion in response to that complaint on December 5, 2007. I indicated that based on the facts and circumstances set forth at that time, it was reasonable for the Trustee to set aside one day each month to produce copies based on requests received. Now, though, the Trustee is effectively denying you access by insisting you may only inspect

records on this one day, a day which cannot be accommodated by your schedule. Former Counselor O'Connor addressed a similar issue in *Opinion of the Public Access Counselor 98-FC-4*, wherein she opined the following:

“Under the Act, there is no requirement that a public agency be open for any particular hours of the day or for any number of hours, but it is the responsibility of a public official and a public agency to ensure that there is adequate opportunity and time for persons who wish to inspect and copy public records to do so.” *Opinion of the Public Access Counselor 98-FC-4*.

It is my opinion the Trustee has denied you adequate opportunity to inspect and copy the public records maintained by the office.

\* \* \*

Finally, it has become apparent to my office that there is ongoing animosity between the Trustee and you. While this office is the place to file a complaint regarding denial of access to records or meetings, it is not the forum to settle disputes of a personal nature. I would encourage both the Trustee and you to limit correspondence to this office to factual matters regarding public access issues.

#### Opinion of the Public Access Counselor 09-FC-159.

Here, it is obvious that each party believes the other has acted unreasonably. On the one hand, you allege that the Trustee has refused to grant you access to records that you need to review in order to vote on a measure that would approve the township's finances for 2009. Under the APRA, the burden is on the Trustee to demonstrate why she could not provide you with those records prior to the January 14<sup>th</sup> meeting. I.C. § 5-14-3-1. I understand the administrative challenges that the Trustee faces. Given the importance of the financial statements and the need for you to review the same before casting her vote (and the fact that the Trustee has an administrative assistant who could presumably assist with any records requests), it is my opinion that the Trustee has not met that burden.

On the other hand, I also understand that you missed several regularly-scheduled appointments during 2009, including an appointment on December 18<sup>th</sup> at which you could have procured a great deal of the information you now seek. Moreover, you made a request on January 11<sup>th</sup> to review records on January 12<sup>th</sup> for the January 14<sup>th</sup> meeting even though you noted in your complaint that you knew of the January 14<sup>th</sup> meeting as

early as January 5<sup>th</sup>. Considering the Trustee's situation, I would not generally expect her to produce documents within 24 hours of a request. Consequently, I encourage you to provide the Trustee with as much advanced notice as possible when requesting records in the future. As always, however, the burden of proof for any failure or refusal by the Trustee to allow you access is and will remain with the Trustee. *Id.*

With regard to Ms. Munson's allegations that the Trustee's meeting notice violated the ODL, I agree that the notice was insufficient. The ODL requires that public notice of the date, *time*, and place of any meetings, executive sessions, or of any rescheduled or reconvened meeting, shall be given at least forty-eight hours (excluding Saturdays, Sundays, and legal holidays) before the meeting. I.C. §5-14-1.5-5(a) (emphasis added). To the extent that the published notices did not include meeting times, they did not comply with section 5 of the ODL.

#### CONCLUSION

For the foregoing reasons, it is my opinion that the Trustee has not met her burden of proof to demonstrate why she has failed to provide you with the records you seek. Moreover, it is my opinion that the meeting notices in question were insufficient under the ODL because they did not include meeting times.

Best regards,



Andrew J. Kossack  
Public Access Counselor

cc: Linda Hollingsworth, Indian Creek Township Trustee