



STATE OF INDIANA

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November 23, 2010

Ms. Jody Owens
1322 S. Morgantown Rd.
Morgantown, IN 46160

Re: Formal Complaint 10-FC-263; Alleged Violation of the Access to Public Records Act by the Jackson Township Trustee

Dear Ms. Owens:

This advisory opinion is in response to your formal complaint alleging the Jackson Township Trustee ("Trustee") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* The Trustee's response is enclosed for your reference.

BACKGROUND

In your complaint, you allege that the Trustee has failed to respond to your "questions or requests for info/documents." You have sent several written requests to the Trustee regarding various subjects, including publications and notices of Jackson Township ("Township") Board ("Board") meetings regarding a tornado siren, minutes of a public meeting, a storage unit being rented by the Township, medical benefits being paid by the Township, a purchase made by the Township, cemeteries in the Township, and office spaces rented by the Township.

In response to your complaint, the Trustee states that he received eight separate letters from you between October 7th and October 18th, and that the Township was working to respond to and fulfill your requests when you filed your complaint on October 26th. He claims that the Township does not intend to deny you access to any records, and that upon request you may access the responsive records at a Township facility. At that time, you may inspect the records and request copies.¹

¹ I note that the Trustee states that copies are available at \$0.75 per page. The APRA permits a public agency to charge a fee for copying a record, but sets certain limits on the amount of the copying fee depending upon the type of public agency. *See* I.C. § 5-14-3-8. Normally, a charge of \$0.75 per page would be excessive for a public agency to charge an individual when the cost of copying cannot exceed the "actual cost of copying." *Id.* However, the APRA also provides that notwithstanding other provisions within section 8 of the APRA, a public agency shall collect any certification, copying, facsimile machine transmission, or search fee that is specified by statute or is ordered by a court. I.C. § 5-14-3-8(f). Thus,

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. The Trustee 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 are excepted from disclosure as confidential or 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 (7) days of receipt, the request is deemed denied. I.C. §5-14-3-9(b). If the request is delivered in person and the agency does not respond within 24 hours, the request is deemed denied. I.C. §5-14-3-9(a). Records do not need to be physically produced within these timeframes; a response from the public agency could be an acknowledgement that the request has been received and information regarding how or when the agency intends to comply. Here, you allege the Trustee did not respond to your requests. If the Trustee failed to respond to your written requests within seven (7) days, the Trustee violated section 9 of the APRA.

That said, it is my understanding that the Trustee has procured all responsive records and will make those available to you for inspection and copying. I trust this resolves your complaint.

CONCLUSION

For the foregoing reasons, it is my opinion that the Trustee should have responded to your written requests within seven days, but did not otherwise violate the APRA.

Best regards,



Andrew J. Kossack
Public Access Counselor

cc: Dan Broyer, Jackson Township Trustee

where a specific statute other than the APRA provides a public agency with the authority to charge a fee that exceeds the “actual cost,” the public agency may charge the statutory fee without violating the APRA. It is unclear why the Trustee has set a copy fee rate of \$0.75 per page, but I note that the APRA expressly prohibits charging requesters for labor or overhead costs incurred in conjunction with obtaining copies. *Id.*