



STATE OF INDIANA

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December 15, 2010

Ms. Kathy Bauman
1854 S. Hickey Rd.
Morgantown, IN 46160

*Re: Formal Complaint 10-FC-284; Alleged Violation of the Access to
Public Records Act by the Jackson Township Trustee*

Dear Ms. Bauman:

This advisory opinion is in response to your formal complaint alleging the Jackson Township Trustee (the "Trustee") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.*, by denying you access to public records. A copy of the Trustee's response to your complaint is enclosed.

BACKGROUND

In your complaint, you allege that the Trustee failed to respond to your letter dated November 1, 2010, in which you requested "general information."

In response to your complaint, the Trustee states that he does not believe that he had ample time to respond to your letter between November 1st and the date you filed this complaint: November 13th. Moreover, the answers to your questions are found in Jackson Township's ("Township") annual report, which is filed by the township in January with the State Board of Accounts and the Morgan County Auditor's Office.

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 Trustee does not contest that his office is a "public agency" under 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 nondisclosable under the APRA. I.C. § 5-14-3-3(a).

You allege that the Trustee violated the APRA by failing to respond to your requests within seven (7) days. Under the APRA, 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). 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.

In my opinion, the Trustee did not violate the APRA by failing to respond to your request because it appears you were seeking general information rather than records. The APRA requires that requests for access to public records “identify with reasonable particularity the *record* being requested...” I.C. § 5-14-3-3(a)(1) (emphasis added). Nothing in the APRA requires a public agency to create records in response to a request. “[T]he APRA governs access to the public records of a public agency that exist; the failure to produce public records that do not exist or are not maintained by the public agency is not a denial under the APRA.” *Opinion of the Public Access Counselor 01-FC-61*. The Trustee maintains that the answers to the questions in your November 1st letter are included in the content of the Township’s annual report. If you submit a records request to the Trustee (or to the State Board of Accounts or the Morgan County Auditor, if the Trustee does not maintain a copy of the report) for a copy of the report, I trust that you will receive a response in accordance with the APRA.

Because the Trustee mentioned copy fees in his response, I note that 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. Fees are typically limited to the agency’s actual cost for copying the record. *Id.* The APRA specifically prohibits an agency from charging a requester for labor or overhead expenses. I.C. § 5-14-3-8(d).

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: Dan Broyer