



STATE OF INDIANA

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November 15, 2011

Ms. Kathy Bauman
1854 S. Hickey Road
Morgantown, Indiana 46160

Re: Formal Complaint 11-FC-282; 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 ("Trustee") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Dale Coffey, Attorney, responded to your complaint. His response is enclosed for your reference.

BACKGROUND

In your formal complaint, you allege that on October 20, 2011, you submitted a written records request to the Trustee for a copy of the minutes for the September 13, 2011 public meeting and a copy of the Trustee's 2012 proposed and submitted budgets. You also allege that as of November 3, 2011, the date you filed your complaint with the Public Access Counselor's Office, you have not receive any response to your request.

In response to your formal complaint, Mr. Coffey provided that copies of the minutes are available at the Trustee's Office and the proposed and submitted budgets were published in the *Reporter-Times*.

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." See I.C. § 5-14-3-1. The Trustee is a public agency for the purposes of the APRA. See 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 otherwise nondisclosable under the APRA. See I.C. § 5-14-3-3(a).

A request for records may be oral or written. *See* I.C. § 5-14-3-3(a); § 5-14-3-9(c). If the request is delivered in person and the agency does not respond within 24 hours, the request is deemed denied. *See* I.C. § 5-14-3-9(a). 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. *See* I.C. § 5-14-3-9(b). Under the APRA, when a request is made in writing and the agency denies the request, the agency must deny the request in writing and include a statement of the specific exemption or exemptions authorizing the withholding of all or part of the record and the name and title or position of the person responsible for the denial. *See* I.C. § 5-14-3-9(c). 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. I have nothing before me to indicate that the Trustee responded to your October 20, 2011 written request. As such, it is my opinion that the Trustee acted contrary to the APRA by not responding to your request in writing.

As to the September 13, 2011 meeting minutes, Mr. Coffey indicated that the minutes are now available at the Trustee's office. You may request that the Trustee mail you a copy of the minutes, and as prior Public Access Counselor's have opined, the Trustee may charge you for the actual cost of sending the records to you. *See Opinions of the Public Access Counselor 03-FC-28 and 09-FC-121*. As to the 2012 proposed and submitted budgets, Mr. Coffey indicated that the budgets were published in the *Reporter-Times*. To the extent that the Trustee has a copy of the record that has been requested, if it has reasonable access to a machine capable of reproducing the record, it is required to provide at least *one copy* of the public record in response to your request. *See* I.C. § 5-14-3-8(e). The responsibility of providing one copy of the public record is not absolved if the record has previously been published by the media. As such, the Trustee is required by the APRA to provide you with one copy of the 2012 proposed and submitted budgets as I have nothing before to me to indicate that it does not have reasonable access to a machine capable of reproducing the record.

CONCLUSION

For the foregoing reasons, it is my opinion that the Trustee acted contrary to the APRA by failing to respond to your written public records request and by not providing to you with a copy of the 2012 submitted and proposed budgets.

Best regards,



Joseph B. Hoage
Public Access Counselor

cc: Dale Coffey