



STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

PUBLIC ACCESS COUNSELOR
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June 28, 2012

Monica A. Prosser
2606 N Shawnee Trail
LaPorte, Indiana 46350

Re: Formal Complaint 12-FC-161; Alleged Violation of the Access to Public Records Act by the Coolspring Township Trustee

Dear Ms. Prosser:

This advisory opinion is in response to your formal complaint alleging the Coolspring Township Trustee ("Trustee") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Nicholas K. Rebac, Coolspring Township Trustee, responded in writing to your formal complaint. His response is enclosed for your reference.

BACKGROUND

In your formal complaint, you provide that you currently serve as the Chairman of the Coolspring Township Board ("Board"). Beginning in January 2012, you have requested records from the Trustee in order to fulfill your duties as a public official. You believe it is necessary to review these items that you have requested in order to prepare the 2013 budget. You provide that your requests are continually denied by the Trustee. You were informed that in order to receive a Township Manual, which outlines certain job responsibilities, you had to print the record on your own personal printer. You have submitted e-mail correspondence to the Trustee regarding your previous records requests, which can be summarized as follows:

- On January 15, 2012, in an e-mail to Mr. Rebac, you requested copies of the last two fire contracts; the Fire Department's budget, 990, and most current bank statement; the last audit report; and time sheets for all non-elected employees of the Trustee's office.
- On March 8, 2012, in an e-mail to Mr. Rebac, you requested the March copy of the Township Bulletin.
- On June 12, 2012, in an e-mail to Mr. Rebac you requested copies of expenditures since the beginning of 2012 as compared to the 2012 budget; financial reports with all certificates of deposit and maturity date; recap of the first six months of 2011 expenditures as compared to 2012; all detailed

credit card expenditures for 2011 to the present, including reimbursements; all detail cell phone expenditures for 2011 to the present, including reimbursements; job descriptions, performance reviews, and time sheets for all non-elected personnel for 2011 to the present. You requested these records by June 20, 2012.

On June 13, 2012, Mr. Rebac responded to your request in writing and advised that the Trustee has limited staff and operating hours. With the current workload regarding township assistance requests, which are the statutory duties of the office, Mr. Rebac provided that he cannot provide the information as requested within the time period provided.

On June 17, 2012, in response to Mr. Rebac's e-mail, you further sought copies of the monthly checkbook balances and receipts/cancelled checks for the last six months and a copy of the Odyssey which shows either the down payment or payment in full for the Rescue Vehicle.

In response to your formal complaint, Mr. Rebac advised that the Trustee utilizes a "Request for Public Records" form in responding to all requests for records made under the APRA. On March 9, 2012, Mr. Rebac informed you via written correspondence of this requirement and provided you with a copy of the request form. As to your March request for a copy of the Township Bulletin, Mr. Rebac responded to your request in writing and provided that the record was not yet available; however the Indiana State Board of Accounts has provided it would be available, in print and on-line, in mid-April. On April 24, 2012, the Township Bulletin was mailed to you.

As to your request for the Township Manual which outlines certain job responsibilities, the Mr. Rebac does not feel it is the responsibility of the Trustee to furnish a list of responsibilities and duties to the Board members. The Trustee follows all state laws regarding its duties and responsibilities. Further, Mr. Rebac has no knowledge of any manual maintained by the Trustee that would be responsive to your request. Your allegation that the Finance Chairman has made requests for records of the Trustee is completely false. The current Finance Chairman has never completed and/or submitted the respective form requesting records. Further, no denial has ever been issued. Lastly, as to your request for minutes, you were sent copies of the preliminary minutes of the January 10, 2012 meeting on May 23, 2012, via certified mail. Currently, there has not been a meeting of the Board to review the minutes and/or approve them. You signed for the receipt of the January minutes on May 30, 2012 via certified mail.

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



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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).

As an initial matter, I.C. § 5-14-5-6 provides that a person or a public agency denied the right to inspect or copy records under I.C. 5-14-3 or any other right conferred by I.C. 5-14-3 may file a formal complaint with the counselor under the procedures prescribed by this chapter or may make an informal inquiry under I.C. § 5-14-4-10(5). I.C. § 5-14-5-7 provides that a person or public agency filing a formal complaint must file the complaint not later than thirty days after the denial. As such, I will not address that allegations contained in your formal complaint addressing the Trustee's alleged denial of your request for records that occurred in January and March 2012.

I would note that the APRA is universally applicable to all persons. A member of a governing body making a request for records, pursuant to the APRA, is not granted any additional rights or privileges under the law. Matters related to the internal governance of a public agency and what records are necessary for public officials to make informed decisions on public matters is separate and distinct from the APRA and outside the purview of this office. *See Opinions of the Public Access Counselor 06-FC-62; 08-FC-19; 08-FC-36.* Your formal complaint will be analyzed pursuant to the APRA; to the extent that you believe the Trustee has failed to provide you with the appropriate records or information in order to fulfill your responsibilities as a public official, you should make an inquiry directly with Trustee and/or Board.

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 twenty-four 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 days of receipt, the request is deemed denied. *See* I.C. § 5-14-3-9(b). At the agency's discretion, a request to inspect and copy may be in writing or on a form provided by the agency. *See* I.C. § 5-14-3-3(a)(2). 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. Here, the Trustee received your written request for records on June 12, 2012 and responded in writing on June 13, 2012. Accordingly, it is my opinion that the Trustee complied with the requirements of section 9 of the APRA.

The APRA does not prescribe timeframes for the actual production of records. The public access counselor has stated repeatedly that records must be produced within a reasonable period of time, based on the facts and circumstances of the request. 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. The APRA requires an agency to separate and/or redact confidential information in public records before making the disclosable information available for inspection and copying. *See* I.C. § 5-14-3-6(a). 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. *See* 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. *See* I.C. § 5-14-3-7(c). The ultimate burden lies with the public agency to show the time period for producing documents is reasonable. *See Opinion of the Public Access Counselor 02-FC-45*. Further nothing in the APRA indicates that a public agency's failure to provide "instant access" to the requested records constitutes a denial of access. *See Opinions of the Public Access Counselor 09-FC-192 and 10-FC-121*.

On June 12, 2012, you submitted a public records request to the Trustee and asked that all records responsive to the request be provided on June 20, 2012. On June 13, 2012, Mr. Rebac responded in writing to your written request and provided that he could not provide all records requested in the time period that you requested due in part to the extensive nature of your request and the limited staff and hours of the Trustee's office. It is my opinion that the Trustee has met its burden in demonstrating that it currently has complied with the requirements of providing all records in a reasonable period of time. It is important to note that the Trustee did not deny your June 12, 2012 request, it advised that due to time and staffing constraints, the records would not be available as quickly as you had requested. As long as the Trustee continues to comply with the requirements of the APRA in responding to your request, including the eventual production of records in a reasonable period of time, it is my opinion that the Trustee has not violated the APRA.

CONCLUSION

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

Best regards,



Joseph B. Hoage
Public Access Counselor

cc: Nicholas Rebac