

July 20, 2001

The Honorable Nancy Wadman, Trustee  
Henry Township, Henry County  
1505 S. Memorial Drive  
New Castle, IN 47362

*Re: Advisory Opinion 01-FC-39; Alleged Denial of Access to Public Records by the Huntington Township Trustee's Office, Huntington County.*

Dear Trustee Wadman:

This is in response to your formal complaint, which was received on July 13, 2001. You have alleged that the Huntington Township Trustee's Office, Huntington County ("Trustee's Office,") violated the Indiana Access to Public Records Act, ("APRA,") Indiana Code chapter 5-14-3. Specifically, you claim that various verbal requests for access to fire protection information in that township were denied verbally by the Trustee's Office.<sup>1</sup> The Honorable Freda Martin, Township Trustee, responded in writing to your complaint and a copy of her response is enclosed for your reference.

For the reasons set forth below, it is my opinion that the Huntington Township Trustee's Office, Huntington County, verbally denied you access to public records under the APRA and that this denial is actionable under the APRA.

## BACKGROUND

According to your complaint, on June 15, June 25 and July 10, 2001, verbal requests for access to information about fire protection, specifically the contract and amount paid for this service, among other things, were made to the Trustee's Office. The first two telephone calls were made by your research assistant for the purpose of researching the cost of fire protection in the State of Indiana. Apparently, Trustee Martin advised the research assistant that she did not want to disclose any information about her township's fire protection because this would "ruin a good deal" that she has with the City of Huntington and that it was not your "business." At that time, Trustee Martin was asked whether she understood that this information is a public record, she apparently responded that it was not of concern to her.

On July 10, 2001, you personally contacted Trustee Martin to again request the information. Trustee Martin allegedly stated that she was tired of people calling her to obtain information and that if she were to disclose the information requested, it would ruin the current arrangement she has with the City of Huntington. You then asked her if she knew that it was a violation of state law to deny access to these public records and she responded that she did not care about the law.

In response to your complaint, Trustee Martin admitted that she did speak to your research assistant, and

she advised her that she did not give out information over the telephone but that if she would put her request in writing, it would be completed as time permitted. She did receive a fax later from the research assistant but it was inadvertently misplaced in her office and never completed. On July 10<sup>th</sup>, Trustee Martin spoke to you by telephone and states that you demanded the information regarding their budget and fire protection contract with the City of Huntington. Trustee Martin stated she was very busy when you called and that she admittedly was not very cooperative. She said that she did provide you with some information on the telephone: they pay approximately \$40,000.00 per year for fire protection, and that the township had purchased a new pumper/tanker fire truck in 1995 at a cost of \$200,000.00 and it is maintained by the City's fire department.

Trustee Martin, however, admits that she was hesitant to provide a copy of the fire protection contract because she thought that the Mayor of New Castle would be calling the Mayor of Huntington to find out why her township was getting such a good deal. You then advised her that the contract was a public record, she was required to provide a copy and that you would be sending her a certified letter requesting the contract and other information on fire protection. Trustee Martin admits that she did tell you at that time that she would throw any such request away, but that she would not have done so in reality. As of the time she responded to your formal complaint, she had not received your written request but she indicated that she will, in fact, honor it.

## ANALYSIS

The public policy of the APRA states that "(p)roviding persons with information is an essential function of a representative government and integral part of the routine duties of public officials and employees, whose duty it is to provide the information." Ind. Code § 5-14-3-1. Furthermore, "[t]his chapter shall be liberally construed to implement this policy and place the burden of proof for the nondisclosure of a public record on the public agency that would deny access to the record and not on the person seeking to inspect and copy the record." Ind. Code § 5-14-3-1.

The Trustee's Office is clearly a public agency for the purposes of the APRA. Ind. Code § 5-14-3-2. Accordingly, any person has the right to inspect and copy the public records of the Trustee's Office during regular business hours unless the public records are excepted from disclosure as confidential or otherwise nondisclosable under Indiana Code section 5-14-3-4. Ind. Code § 5-14-3-3(a). In addition, the Trustee's Office has the discretion to require that requests for access to public records be put in writing, and while it is not prohibited under the APRA, a public agency is not required to provide such information over the telephone. Ind. Code §5-14-3-3(a)(2).

Under the facts presented, you have claimed that three separate verbal requests, all made by telephone, were denied by Trustee Martin between mid-June and July 10, 2001. A denial of disclosure occurs when a person makes a request by telephone:

1. [when] the person designated by the public agency as being responsible for public records release decisions refuses to permit inspection and copying when a request has been made; or

2. twenty-four (24) hours elapse after any employee of the public agency refuses to permit inspection and copying of a public record when a request has been made; whichever occurs first.

Indiana Code §5-14-3-9(a). If a public agency denies access to a public record, then the person who has been denied access may file an action in the circuit or superior court in the county in which the denial occurred to compel disclosure of the public record. Ind. Code §5-14-3-9(d).

In addition to the verbal requests made prior to the filing of your formal complaint, your research assistant faxed a written request for information to Trustee Martin, upon request of the Trustee, in June and no response was made to that request because it was misplaced. According to Trustee Martin, that request was more of a fill-in-the blank survey rather than a direct request for public records such as the fire protection contract or budget. For the purposes of this Opinion, therefore, I will address only the verbal requests made to the Trustee's Office.

There is no question that both you and your research assistant contacted the Trustee's Office and requested access to public records. With respect to your July 10, 2001 telephone call, it is clear that you expressly asked for copies of public records concerning the Township's fire protection arrangements and financing. Trustee Martin apparently responded to your verbal request in a manner that indicated that she would not provide the information and that, if you were to send a written request, that would not be honored either. Trustee Martin does not dispute that this is how your conversation ended on July 10<sup>th</sup>.

It is my opinion that Trustee Martin's response by telephone that you could not have access to the copies of the public records requested was a denial under Indiana Code section 5-14-3-9(a)(1). This denial is actionable under the APRA in the superior or circuit court in the county in which the denial occurred. Ind. Code §5-14-3-9(d). Regardless of Trustee Martin's real intentions with respect to your written request sent on July 11<sup>th</sup>, she did deny you access to the public records in question during your telephone conversation with her on July 10<sup>th</sup>.

While it is understandable that the Trustee's Office may have been experiencing a busy time when you called, the more appropriate response to your telephone call on July 10<sup>th</sup> would have been just to request that you place your request in writing. This is permissible under Indiana Code section 5-14-3-3(a)(2). It is important to note that in her response to your complaint, Trustee Martin did acknowledge that she will be providing you access to the requested public records, but this does not alter my opinion that she verbally denied you access over the telephone on July 10, 2001.

## CONCLUSION

It is my opinion that the Huntington Township Trustee's Office, Huntington County, verbally denied you access to public records under the APRA and that this denial is actionable under Indiana Code section 5-14-3-9(d).

Sincerely,

Anne Mullin O'Connor

Enclosure

cc: The Honorable Freda Martin, Trustee  
Huntington Township, Huntington County

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*<sup>1</sup>With your complaint, you also provided a copy of a written request for the same information that was sent to Trustee Martin on July 11, 2001 by certified mail. Because the time for response to this request had not expired as of the time of the filing of your complaint, this Opinion does not include any discussion of that request. html>*