



STATE OF INDIANA

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August 12, 2009

Cheryl Ann Munson
6707 West Rock East Road
Bloomington, Indiana 47403

Re: Formal Complaint 09-FC-159; Alleged Violation of the Access to Public Records Act by the Indian Creek Township Trustee

Dear Ms. Munson:

This advisory opinion is in response to your formal complaint alleging the Indian Creek Township Trustee ("Trustee") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by denying you access to records. A copy of the Trustee's response to the complaint is enclosed for your reference. It is my opinion the Trustee has violated the APRA.

BACKGROUND

You allege that you have been trying since June 2008 to obtain access to inspect and copy records maintained by the Trustee. You allege the most recent denial occurred on June 11, 2009. You contend the Trustee will not agree to an appointment for you to inspect the records at a time that is convenient for you. You allege the Trustee sets a once monthly appointment for inspection of records and your work schedule does not allow you to meet that appointment. Further, you contend the Trustee has required you to provide a \$50 cash deposit to make copies, but you are concerned that if you provide such the Trustee will make copies of records you do not wish to be copied. My office received your complaint on July 15, 2009. The complaint was postmarked on July 11, so it was timely pursuant to I.C. § 5-14-5-7(b)(2). You requested priority status but did not allege any of the reasons for priority status listed in 62 IAC 1-1-3, so priority status was not granted.

The Trustee responded to the complaint by letter dated July 23. The Trustee contends that your agent has refused to sign a receipt form indicating he was entitled to all requested information except names of individuals. Further, the Trustee contends she must require advanced payment of copy fees because in the past you have refused to pay for copies. Regarding copies of checks, the Trustee contends it would be difficult to copy the checks as they are currently maintained and you have refused to pay the fee charged by the bank for producing copies. The Trustee contends that you have a standing

appointment to inspect records on the fourth Tuesday of every month and you have failed to appear for several of those meetings in the past months.

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's office is clearly a public agency for the purposes of the APRA. I.C. § 5-14-3-2(m). Accordingly, any person has the right to inspect and copy the public records of the Trustee during regular business hours unless the public records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. I.C. § 5-14-3-3(a).

A request for access to records may be oral or written. I.C. §§ 5-14-3-3(a), 5-14-3-9(c). An agency may require that a request be submitted in writing. I.C. § 5-14-3-3(a)(2). If the request is delivered in person and the agency does not respond to the request within twenty-four hours of receipt, the request is deemed denied. I.C. § 5-14-3-9(a). If the request is delivered by mail or facsimile (or as this office has said, electronic mail) and the agency does not respond to the request within seven days of receipt, the request is deemed denied. I.C. § 5-14-3-9(b).

A response could be an acknowledgement that the request has been received and information regarding how or when the agency intends to comply. There are no prescribed timeframes when the records must be produced by a public agency. A public agency is required to regulate any material interference with the regular discharge of the functions or duties of the public agency or public employees. 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. I.C. § 5-14-3-7(c). Former public access counselors and I have opined that records must be produced within a reasonable period of time, based on the facts and circumstances. Consideration of 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 are necessary to determine whether the agency has produced records within a reasonable timeframe.

The Trustee contends that you have a standing appointment one day each month on which you may receive access to inspect records the Trustee maintains. She further contends you may at that point indicate which records you would like copied and provide payment for those. While the APRA allows an agency to charge in advance for copy costs, it does not provide that an agency may assign an arbitrary cash deposit amount. *See* I.C. § 5-14-3-8. Certainly the Trustee may require advance payment, but it is my opinion the amount charged must be based on the number of copies requested multiplied by the established copy cost that conforms with I.C. § 5-14-3-8.

Regarding the Trustee's insistence that you may only inspect records on the one day per month assigned to you, it is my opinion the Trustee has misunderstood my

opinion in response to your Formal Complaint 07-FC-343. I issued an opinion in response to that complaint on December 5, 2007. I indicated that based on the facts and circumstances set forth at that time, it was reasonable for the Trustee to set aside one day each month to produce copies based on requests received. Now, though, the Trustee is effectively denying you access by insisting you may only inspect records on this one day, a day which cannot be accommodated by your schedule. Former Counselor O'Connor addressed a similar issue in *Opinion of the Public Access Counselor 98-FC-4*, wherein she opined the following:

Under the Act, there is no requirement that a public agency be open for any particular hours of the day or for any number of hours, but it is the responsibility of a public official and a public agency to ensure that there is adequate opportunity and time for persons who wish to inspect and copy public records to do so.

Opinion of the Public Access Counselor 98-FC-4.

It is my opinion the Trustee has denied you adequate opportunity to inspect and copy the public records maintained by the office.

Finally, you contend that the Trustee continues to deny you access to records related to fire and medical services. The Trustee contends the records at issue are confidential. I would urge the Trustee to review the applicable statutes to be sure all records to which she is denying access are indeed confidential. Confidentiality is not a status conferred by a public agency or employee. In this matter, confidentiality is conferred by state or federal statute. *See* I.C. § 5-14-3-4(a). The Trustee has the duty, if you have made your request in writing, to provide you with a statement of the specific exemption or exemptions authorizing the withholding of the records or parts of the records. I.C. § 5-14-3-9(c). It is my understanding the Trustee has not done so.

CONCLUSION

For the foregoing reasons, it is my opinion the Trustee has violated the APRA.

Finally, it has become apparent to my office that there is ongoing animosity between the Trustee and you. While this office is the place to file a complaint regarding denial of access to records or meetings, it is not the forum to settle disputes of a personal nature. I would encourage both the Trustee and you to limit correspondence to this office to factual matters regarding public access issues.

Best regards,



Heather Willis Neal
Public Access Counselor

Cc: Linda Hollingsworth, Indian Creek Township Trustee