



# STATE OF INDIANA

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March 12, 2009

Ben Kindle  
4972 West Sims Lane  
Monrovia, Indiana 46157

*Re: Formal Complaint 09-FC-49; Alleged Violation of the Access to Public Records Act by Gregg Township Trustee*

Dear Mr. Kindle:

This advisory opinion is in response to your formal complaint alleging Gregg 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 not violated the APRA.

## BACKGROUND

You submitted a formal complaint postmarked on February 10, 2009 and received by my office on February 11, alleging the Trustee violated the APRA. You later submitted additional complaints dated February 25 and March 2. Because all three complaints address the same agency and the same request, the complaints have been consolidated and are all addressed in this opinion.

You allege that you sent a request for access to records to the Trustee on October 21, 2008. You requested access to nine categories of records. You allege you followed up on the request on November 21 and December 12 and then at a public meeting on January 20, 2009. You allege the Trustee has not provided you any of the requested documents but has indicated she was being audited by the Indiana State Board of Accounts ("SBOA") and as such could not access the records. You also indicate the Trustee has disconnected her telephone, making it difficult to reach her.

In your February 25 addendum to the complaint, you allege that the Trustee contacted you at some point in February to make an appointment to meet so you could inspect the requested records and make copies. You allege that of the nine items you requested, the Trustee provided only two of them, and you allege even those two were not complete. Further, you allege the Trustee gave you copies of records you did not request and charged you a fee of \$2.10 for those copies.

In your March 2 addendum, you indicate that on February 27 you received a package of materials from the Trustee. You allege several of the records you requested are still missing. Finally, you indicate the Trustee included an invoice for \$1.90, but you still complain that the Trustee has overcharged you \$2.10 for copies you did not request.

The Trustee responded to the complaint by letter dated March 11. The Trustee contends the original request, while dated October 21, 2008, was postmarked November 6 and received on November 11. The Trustee indicates she sent you a response to the request on November 14. The Trustee included with the complaint response a copy of that November 14 response, which is a detailed response addressing each of the nine items individually. The Trustee further contends you did not contact her again until on or about December 12. The Trustee indicates the SBOA audit began during the week of November 24. During the audit, the SBOA had possession of the records, and the Trustee could not access them. The Trustee contends that when she spoke to you on December 12 she told you about the SBOA audit and further indicated she would contact you when the records were returned. The Trustee contends you made no further contact with her regarding the records.

The Trustee indicates that on February 11 the SBOA completed its audit and returned the records to the Trustee. On February 13 the Trustee sent you a letter notifying you the records were available and advising you that upon receipt of the \$6.00 copy fee payment, the Trustee would send you the records. The Trustee offered that in the alternative, a meeting could be set so you could inspect the records. You chose to meet the Trustee at a public library to inspect the records.

The Trustee met with you on February 23. Because you were unable to independently operate the copy machine, the Trustee attempted to assist you. You deposited money directly into the machine and made no payments directly to the Township. The Trustee indicates that a few documents were inadvertently copied several times. The Trustee contends you made copies of 2008 minutes and bank records. You indicated you already had copies of the 2006 and 2007 minutes from previous requests and as such did not copy those. Later that day, you telephoned the Trustee and requested copies of the 2007 minutes as well as additional records. The Trustee copied those records and mailed them to you on the same day of your call, together with the \$1.90 invoice.

Regarding the attorney invoices you requested, the Trustee indicates that you did not indicate the dates for which you are requesting invoices. The Trustee is working to redact invoices from 2008 and will provide copies to you. The Trustee provides a detailed explanation of copies of checks you allege were missing from the records you received. Finally, the Trustee contends that while she did disconnect her personal telephone in favor of a personal mobile telephone, the Township telephone line has not been disconnected.

In addition to the factual narrative the Trustee provided which I have recounted in the preceding paragraphs, the Trustee provides legal arguments to your allegations. I address those in the following section.

## 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 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 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 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 APRA. 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.

Here, the Trustee received your request by mail on November 11 and responded to the request by letter dated November 14. Pursuant to I.C. § 5-14-3-9(b), the request was timely. Further, when you contacted the Trustee again in December, the Trustee answered your inquiries on the same day. The Trustee contends you did not contact her regarding the request at any other time.

The Trustee contends that because the SBOA was auditing the Township and maintained control over the records, she could not provide you access to the records. Generally during an SBOA audit an agency is able to obtain access to records from time to time, so long as those records are not under scrutiny by the SBOA at the time of the request. Here, though, since you requested such a large number of records, it is understandable that the Trustee could not access those records. Under other circumstances, I would be inclined to say that over three months seems an excessive amount of time to provide access to these records. Given the circumstances here, though,

it is my opinion the Trustee did not take an unreasonable amount of time to provide access to the records. In my opinion, that she contacted you within two days of receiving the records back from the SBOA is evidence of the Trustee's good faith effort to provide you access to the records as soon as practical and possible. In my opinion, the Trustee's reliance on I.C. § 5-14-3-7 in this matter is appropriate.

Regarding the groups of records the Trustee indicates the Township does not maintain, the Trustee has again not violated the APRA. Nothing in the APRA requires a public agency to *develop* records or information pursuant to a request. The APRA requires the public agency to *provide access* to records already created. The Trustee is not required to create records responsive to your request.

Further, it is my opinion the Trustee has not charged you excessive copy costs. The Trustee assisted you in making copies of records, which is your right under the APRA. As I understand it, during that process, while you were using the library's public copy machine, extra copies of records were inadvertently made. The Trustee did not charge you excessive copy fees. In fact, the money you paid for those copies was not even billed by the Trustee. Instead, you paid the usage charge to the library for use of the copy machine. As such, it is my opinion the Trustee has not charged you excessive copy fees and based on I.C. § 5-14-3-8, you should remit the \$1.90 copy charges for the records you requested after your February 23 inspection of records.

Finally, regarding the Trustee's telephone, I have addressed similar issues related to this Township in the past in response to complaints filed by you, and my opinion remains the same. The Trustee is not required to utilize her personal telephone for public records requests.

#### CONCLUSION

For the foregoing reasons, it is my opinion the Trustee has not violated the APRA.

Best regards,



Heather Willis Neal  
Public Access Counselor

Cc: Stephen R. Buschmann, Thrasher Buschmann Griffith & Voelkel, P.C.