



STATE OF INDIANA

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Via email transmission

July 18, 2016

Ms. Michelle Bright

Re: Informal Inquiry 16-INF-20; Volunteer Fire Departments and the APRA

Dear Ms. Bright:

This is in response to your informal inquiry regarding whether meetings conducted between the Benton Township of Monroe County Volunteer Fire Department are subject to the Access to Public Records Act.

BACKGROUND

You seek a determination as to whether the Department is subject to the APRA. You note the Department is a recognized nonprofit by the State Board of Accounts and the Internal Revenue Service. The Township contracts with the Department to provide manpower, as required by Indiana Code § 36-8-13-3.

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 Indiana Code § 5-14-3-1.*

Under Indiana Code 5-14-3-2(q)(1) public agency means “Any board, commission, department, division, bureau, committee, agency, office, instrumentality, or authority, by whatever name designated, exercising any part of the executive, administrative, judicial, or legislative power of the state.”

In *Ayres v. Indian Heights Volunteer Fire Department*, 493 N.E.2d 1229 (Ind. 1986), the Indiana Supreme Court held in construing the Indiana Tort Claim Act, that a volunteer fire department of a township is an instrumentality of local government and was entitled to immunity “regardless of which of the five ways the township arranges to provide fire service under Indiana law.”¹ The Supreme Court held in *Ayres* that the establishment of fire departments, including volunteer fire departments under Indiana Code 36-8-12 “recognized the need for local governments to provide for fire protection in their

¹ *Ayres v. Indian Heights Volunteer Fire Dept., Inc.*, 493 N.E.2d 1229, 1237 (Ind. 1986)

communities.” When private individuals or groups are endowed by the state with powers or functions governmental in nature, they become agencies or instrumentalities of the state and are subject to the laws and statutes affecting governmental agencies and corporations. *Id. at 1235*. Because the volunteer fire department is performing a government function, it is a public agency subject to Public Access Laws. This has been affirmed by prior Public Access Counselors as recently as 2009. *See Opinion of the Public Access Counselor 09-FC-134*.

In *Veolia Water Indianapolis, LLC v. Nat'l Trust Ins. Co.*, 3 N.E.3d 1 (Ind. 2014), the Supreme Court reiterated its holding in *Ayres* that fire services are essential governmental services. It distinguished the defendant entity by opining that a for-profit, autonomous, wholly private entity is bound to the city only by contract may not always be considered to be an instrumentality of the state. It may, however, be liable under the Tort Claims Act for failure to provide an element of outsourced essential services.

Additionally, volunteer fire departments have been specifically contemplated by the legislature in the Indiana Tort Claim Act. Indiana Code § 34-13-3-22 which states a volunteer fire department that is acting under a contract with a unit or a fire protection district shall be treated as a political subdivision under the ITCA.

When a third-party private entity steps in the shoes of a public agency as a ‘state actor’, it can become custodian of public records when it creates documents for the government’s benefit. *See Knightstown Banner v. Town of Knightstown*, 838 N.E.2d 1127 (Ind. Ct. App. 2005). The Fire Department is considered an instrumentality of the state because it is a not-for-profit agency empowered by Indiana law to provide fire protection services.

When an entity is deemed a state actor, it must comply with public access laws. Disclosure is limited solely to the extent it provides a state service. In *Advisory Opinion 16-FC-32*, I held Trine University is only obligated to disclose public records related to its accreditation process for charter schools. The principle is the same here; however, the Department appears to be solely functioning as a fire protection service and does not have any other unrelated services. Therefore, the Department would have to disclose all public records. This mandate extends to any records, such as emails, generated by the fire chief or volunteer fire fighters related to the Department’s actions.

Please do not hesitate to contact me with any questions.

Best regards,

A handwritten signature in black ink, appearing to read 'L. Britt', with a large, sweeping flourish underneath.

Luke H. Britt
Public Access Counselor