

March 28, 2008

Ben Kindle  
4972 West Sims Lane  
Monrovia, Indiana 46157

*Re: Formal Complaint 08-FC-77; Alleged Violation of the Access to Public Records Act by the Monroe County Brown Township Trustee*

Dear Mr. Kindle:

This advisory opinion is in response to your formal complaint alleging the Monroe County Brown Township Trustee ("Trustee") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by denying you access to a record. I have enclosed a copy of the Trustee's response to your complaint for your reference. It is my opinion the Trustee violated the APRA.

#### BACKGROUND

In your complaint you allege that you appeared at the office of the Trustee on March 3, 2008 and requested a copy of the agreement between Brown Township and Gregg Township for lease of the Gregg Township ambulance. You allege the Trustee denied the request and indicated you should go to the Gregg Township Trustee since you reside in Gregg Township. You filed this complaint on March 5.

The Trustee responded to the complaint by letter dated March 6. The Trustee contends you telephoned with your request rather than making the request in person. He confirms he told you that you could obtain a copy of the record from your township trustee. The Trustee further indicates it is his understanding requests must be made in writing and he has 72 hours to respond. Finally, the Trustee indicates that if the request had been made in person or by registered mail, he would have provided you with the requested copy.

#### 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. 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 and the agency does not respond within seven days, the request is deemed denied. I.C. § 5-14-3-9(b). If the request is delivered orally or in person at the office and the agency does not respond within 24 business hours, the request is deemed denied. I.C. § 5-14-3-9(a).

The Trustee received your request by telephone on March 3. Generally, a telephone request is allowed under the APRA, and when a request is made by telephone, the response must be made within 24 business hours (so by the same time of day on the next business day) of the request. I.C. § 5-14-3-9(a).

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). The public access counselor has stated 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 may require request to be made in writing, in or on a form prescribed by the Trustee. I.C. § 5-14-3-3(a). If this is the procedure utilized by the Trustee, it is incumbent upon the Trustee to advise you of the procedure rather than ignoring the request. It is my opinion the Trustee violated the APRA by neither responding to your request nor advising you that requests must be made in writing. I would note, though, that nothing in the APRA allows an agency to require a request to be delivered by registered mail. Even when an agency requires a request to be made in writing, a requester may still appear at the office to deliver the request, mail the request by regular mail, or fax or email the request, if those technologies are available.

Regarding the Trustee's suggestion that you should obtain the record from your trustee, nothing in the APRA restricts access of records to only residents who are taxpayers of the political subdivision or district of the agency. Records subject to disclosure must be disclosed regardless of who requests them. Further, no request may be refused because the person refuses to state the purpose of the request, unless such a condition is required by another statute. I.C. § 5-14-3-3(a).

## CONCLUSION

For the foregoing reasons, it is my opinion the Trustee violated the Access to Public Records Act.

Best regards,



Heather Willis Neal  
Public Access Counselor

Cc: Al Hornaday, Monroe County Brown Township Trustee