

May 30, 2008

Sonjia Graf
6364 North Kivett Road
Monrovia, Indiana 46157

Re: Formal Complaint 08-FC-121; Alleged Violation of the Access to Public Records Act by the Morgan County Gregg Township Advisory Board

Dear Ms. Graf:

This advisory opinion is in response to your formal complaints alleging the Gregg Township Advisory Board (“Board”) violated the Access to Public Records Act (“APRA”) (Ind. Code 5-14-3) by denying you access to records. I have enclosed a copy of the Board’s response to the complaint for your reference. It is my opinion the Board has not violated the APRA.

BACKGROUND

You allege that you submitted a request to the Board Secretary for copies of the Board’s meeting minutes for 2007 and 2008. You allege you submitted the request on May 5, 2008. You further allege that at the May 12 Board meeting you were not provided with the records and the Secretary purposefully avoided you. You filed this complaint on May 13.

The Board responded to the complaint by letter dated May 28, 2008 from attorney Stephen Buschmann. The Board contends you mailed the request to the home address of Mary Ann Banks. While Ms. Banks is a member of the Board, she is not the secretary. The Board contends that the Trustee, the keeper of the Board’s records, was present at the May 12 meeting and was in possession of the minute book. The Board contends that contrary to your allegation, you did not approach anyone about the request.

The Board asserts that you filed this complaint before the statutory time for response had expired. Ms. Banks received the request on May 7, and you filed the complaint on May 13. Further, you sent the request to a home address and not to the Gregg Township address, so the request was not valid. In addition, Ms. Banks does not maintain the records you seek. Finally, the Board contends that it was made aware of the request on May 15, when it received a copy of the complaint from this office. The Trustee responded to your request on May 19 with an indication of the associated copy costs, so the response was timely under the APRA.

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 Board 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 Board 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).

Because I recently addressed the issue regarding this Township Trustee's address and telephone number in *Opinion of the Public Access Counselor 08-FC-73*, I will refer you to that opinion for information regarding those matters. My opinion remains unchanged that you must submit your requests to the agency's official address when submitting a request to any agency of the Township. A request sent to an official's home address is not an appropriate request for access to records under the APRA.

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). Here, the Board received a copy of the request when this office forwarded a copy of the complaint, on May 15. The Board responded on May 19. This is a timely response pursuant to the APRA.

Because the May 5 request was not sent to an official address, it was not a valid request, and as such a response could not have been expected. Even if the request were valid, the APRA provides that a request must be made with seven days of receipt of the request. If you mailed the request on May 5, it could not possibly have arrived on May 5, so you should not have expected a response by May 12. Further, the Board is not required to produce the records within seven days; it is only required to respond to the request within seven days.

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.

I again note it is clear some animosity exists among several members of the Gregg Township community. While this office will always address complaints related to alleged violations of the Access to Public Records Act, pursuant to I.C. § 5-14-5-9, it is not the place to

address personal grievances. Further, it is not the place to continue to raise the same issues again and again. I have issued an opinion regarding the issues you raise. If you do not agree with my opinion or seek further action in those matters, the appropriate place to address those issues is in a court of law. *See* I.C. § 5-14-3-9(e).

CONCLUSION

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

Best regards,



Heather Willis Neal
Public Access Counselor

cc: Stephen R. Buschmann, Thrasher Buschmann Griffith & Voelkel