

April 30, 2008

Ben Kindle
4972 West Sims Lane
Monrovia, Indiana 46157

Re: Formal Complaint 08-FC-100; Alleged Violation of the Access to Public Records Act by the Morgan County Brown Township Trustee

Dear Mr. Kindle:

This advisory opinion is in response to your formal complaint alleging the Morgan 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 has violated the APRA if he did not respond to the request within seven days.

BACKGROUND

In your complaint you allege that after you received my opinion in response to Formal Complaint 08-FC-77, you resubmitted a written request for access to records on April 3, 2008. You sent the request via regular mail. Receiving no response, you mailed this complaint on April 21, and I received it on April 22.

Trustee Al Hornaday responded to the complaint by letter dated April 23. Mr. Hornaday contends that upon receipt of your request on April 7, he copied the records and had them available for you in his office. Mr. Hornaday indicates that upon receipt of the \$.35 copy charge, he will provide you with the copies. Mr. Hornaday contends he did not indicate he would mail the copies but would have them available within 72 hours of your request.

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).

The Trustee received your written request on April 7. What is unclear is whether the Trustee responded to that request. I understand the Trustee contends he copied the records and had them available for you, but he does not indicate that he responded to the request. The APRA requires a response to a written request within seven days of receipt of the request. 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. If the records are available within the time prescribed for a response, the response could be an indication that the records are ready. Here, though, the Trustee assumed you would know the records were available, and it is my opinion that in not in line with the response requirement in the APRA.

Regarding the Trustee's contention that he did not indicate to you he would mail the records, nothing in the APRA requires the Trustee to automatically mail the records. It is my opinion, though, that if you request to have the records mailed, the Trustee should mail the records to you. While the APRA is silent on the issue of postage charges, it is my opinion the Trustee could charge you the actual cost of postage in addition to the applicable copy charges. As is the case for copy charges, the Trustee may require payment of the postage charges in advance. See I.C. § 5-14-3-8(e).

CONCLUSION

For the foregoing reasons, it is my opinion the Trustee violated the Access to Public Records Act if he did not respond to the request within seven days.

Best regards,



Heather Willis Neal
Public Access Counselor

Cc: Al Hornaday, Monroe County Brown Township Trustee