

April 17, 2008

Ben Kindle
4972 West Sims Lane
Monrovia, Indiana 46157

Re: Formal Complaint 08-FC-86; Alleged Violation of the Access to Public Records Act by the Morgan County Gregg Township Trustee

Dear Mr. Kindle:

This advisory opinion is in response to your formal complaint alleging the Gregg Township Trustee (“Trustee”) 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 Trustee’s response to the complaint for your reference. It is my opinion the Trustee has not violated the APRA.

BACKGROUND

You allege that you submitted a request for access to records maintained by Trustee by letter dated March 10, 2008. You indicate the Trustee responded by letter dated March 13. In the March 13 letter, the Trustee directed you to send correspondence to the Post Office box maintained for the Trustee’s business. The Trustee further indicated the cost for copying and postage to deliver the records is \$5.31, which should be paid in advance. You mailed this complaint on March 26, and I received it on March 31.

You complain that the Trustee will not accept township mail or telephone calls at her home and that the Trustee is charging copying costs in advance. Further, you indicate that the attorney to whom you sent a copy of the request has indicated he is not the township attorney. I cannot ascertain whether you intended this information related to the county attorney to serve as a complaint or simply information, but the matter of duties of the county attorney is certainly outside the purview of this office. Finally, you complain that the Trustee has charged you copy and postage costs in advance. You allege that the Trustee often does not include the correct records and as such you would prefer to verify that the production meets the request.

Because I recently addressed the issue regarding this 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. I have enclosed a copy of that opinion for your reference. I will here address the issue of the copy costs.

The Trustee responded to your request by letter from attorney Stephen Buschmann dated April 10, 2008. Mr. Buschmann addresses all the issues you have raised. I have enclosed a copy of the response for your reference, so I will not here reiterate the responses related to those matters I addressed in *Opinion of the Public Access Counselor 08-FC-73*. Regarding copy fees, Mr. Buschmann contends that the Trustee will send you the copies she has prepared upon receipt of payment in the amount of \$5.31. In the alternative, you may arrange a time to meet with the Trustee at the Gregg Township Fire Department to inspect the records and indicate which records you wish to be copied.

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 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 Trustee responded to your March 10 request on March 13, which is well within the seven days allowed by the APRA. *See* I.C. § 5-14-3-9(b).

Regarding fees for copying, the APRA provides that a public agency may require that payment for copying costs be made in advance. I.C. § 5-14-3-8(e). As such, the Trustee has not violated the APRA by requiring advance payment for copies. The APRA does not require an agency to absorb the costs associated with mailing copies of records; in fact, the APRA does not address postage fees. It is my opinion a public agency may charge to the requester the direct cost of postage for mailing copies of records to a requester. To the extent you are concerned that you will not receive the correct records, the Trustee has offered to meet with you so you may inspect the records and indicate which records you wish to have copied. It is my opinion the Trustee is in compliance with the APRA in offering to meet with you so you may inspect the records.

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: Carol Snyder, Gregg Township Trustee