

November 7, 2003

Mr. Thomas L. Whitley
5012 E. Orchard Road
Mooresville, IN 46158

Re: Advisory Opinion 03-FC-101: *Concerning the Alleged Denial of Access to Public Records by the Madison Township Trustee*

Dear Mr. Whitley:

This is in response to your formal complaint, received on October 10, 2003. In it, you allege that the Madison Township Trustee (the "Trustee") violated the Access to Public Records Act (the "APRA"). Specifically, you allege that the Trustee failed to respond within the permitted time period. Mr. Stephen R. Buschmann, counsel for Madison Township, Morgan County, responded in writing your complaint. A copy of his response is enclosed for your reference.

For the reasons set forth below, it is my opinion that while there was a timely response to your request under the APRA, you were improperly denied access to public records in violation of the APRA when you were subsequently required to resubmit your request to a specific individual in the same office to achieve production.¹

BACKGROUND

In your complaint you allege that you called the Madison Township Clerk's Office (the "Clerk's Office")² on October 7, 2003, at 9:00 a.m. and left a message requesting copies of bank statements and ending balances for all funds of July, August, and September. You allege that you called again on October 7, 2003, at 4:15 to verify

¹ Since the time you filed your complaint, we received your supplemental correspondence indicating that you have received production of documents, at least in part. Because no formal complaint has been filed alleging inadequate or incomplete production, no opinion regarding that issue is offered here.

² This office is advised that the Township Trustee's Office and the Township Clerk's Office are not separate entities, but rather the Clerk is an employee of the Trustee. Mr. Buschmann's response acknowledges that your request was a request to the Trustee's Office.

that the message had been received. You allege that the Clerk's assistant acknowledged receipt of your request and advised you that the records would not be available that night because the Clerk had taken the day off. You allege that you called again on October 8, at 5:00 p.m. to inquire into the status of your request and advise that you would be at the Clerk's Office around 7:00 p.m. You allege that the Clerk's assistant told you the Clerk had taken another day off, and that the assistant was not sure your request would be completed by the time you arrived. When you arrived at the Clerk's Office at 7:00 p.m., you allege that you confronted the Clerk regarding the status of your request, and that the Clerk informed you that you must submit your request through the Trustee. You then filed your complaint with this Office.

According to Mr. Buschmann's response you made a public records request to the Township Trustee's Office on October 7, 2003. The message was received by the part time assistant sometime after 4:00 p.m.³ Mr. Buschmann further alleges that the township's assistant did not refer the information to the Clerk until Thursday, October 9, 2003. On the evening of October 9, 2003, according to Mr. Buschmann, you appeared at the township offices and discussed the request with Ms. Coburn, the Township Clerk, at which time she advised that you would have to contact the Trustee in order to obtain the information you were requesting.

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." Ind. Code § 5-14-3-1. Furthermore, "[t]his chapter shall be liberally construed to implement this policy and place the burden of proof for the nondisclosure of a public record on the public agency that would deny access to the record and not on the person seeking to inspect and copy the record." Ind. Code § 5-14-3-1.

The Trustee's Office is a public agency for the purposes of the APRA. Ind. Code § 5-14-3-2. Accordingly, any person has the right to inspect and copy the public records of the Trustee's Office during regular business hours unless the public records are excepted from disclosure as confidential or otherwise nondisclosable under Indiana Code section 5-14-3-4. Ind. Code § 5-14-3-3(a).

It is the responsibility of the public agency to respond to requests for access to public records within a specified time period. The APRA does not set any time period for producing records, merely for responding to the request. While this response has not been defined under the APRA, what is contemplated is a communication to the requestor. For example, a public agency may respond that the request has been received, whether there are any records that will be produced, that the records requested are confidential or otherwise nondisclosable, or that the public agency needs more time to compile the records requested. A response may also provide the records requested, or notify the

³ The township offices are open from 8:30 a.m. until 6:00 p.m. Monday through Thursday. However, from 8:30 a.m. until 4:00 p.m. the offices are generally unstaffed.

requestor that the public records requested are available for his or her inspection.

In your complaint you contend that you were denied access to public records on three (3) occasions because of a failure to timely respond. Although it is my opinion that the Trustee's Office did respond to your request within the statutory time period, I further find that a violation of the APRA occurred when you were subsequently required to resubmit your request to a specific individual in the same office to achieve production.

The office timely responded to your request. On October 7, 2003, you left a message on the machine requesting public records. Later than same day you called to verify that the message had been received. At that time you were advised by the part time assistant, according to the documents you provided, that "the copies would not be there that night because the clerk had taken the day off." This response is sufficient to satisfy the response requirement under Indiana Code section 5-14-3-9. On October 8, 2003, you again followed up your request by telephone and asked if the document would be ready on that day for pick up. Again you were advised that the Clerk had taken the day off and that it was unclear whether the records would be provided on that day. This response also satisfies the requirement as set forth in Indiana Code section 5-14-3-9.

The Trustee's Office ran afoul of the APRA when the Clerk subsequently required you to submit the same request to a specific individual within the same office in order to achieve production. Specifically, on the evening of October 8, 2003, the Clerk declined to produce any records in response to your request and instead instructed you to resubmit your request to the Trustee in order to obtain the information you requested. It is my opinion that this response by the Clerk did violate the APRA. According to information provided to this Office in a telephone conversation with Mr. Buschmann, the clerk is an employee of the Trustee and thus a part of the Trustee's Office. Consequently, as indicated and acknowledged in the Trustee's response to your complaint, when you submitted your request to the Clerk's Office you submitted your request to the Trustee's Office. The Trustee's Office is responsible for directing your request to the specific individual within that office who is in the best position to respond to your request and to produce any public records that are subject to disclosure. It is my opinion that the Trustee's Office violated the APRA when it required you to resubmit your request to a particular person within the Trustee's Office in order to achieve production.

CONCLUSION

It is my opinion that the Madison Township Trustee's Office violated the Indiana Access to Public Records Act when it required that you resubmit your public records request to a particular person within the Trustee's Office in order to achieve production.

Sincerely,

Michael A. Hurst
Public Access Counselor

cc: Mr. Stephen Buschmann, Madison Township Attorney