

November 13, 2003

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

Re: Formal Complaint 03-FC-103: *Alleged Violation of the Access to Public Records Act by the Madison Township Trustee*

Dear Mr. Whitley,

This is in response to your formal complaint, received on October 15, 2003. In it, you allege that Rodger Birchfield, Madison Township Trustee (the "Trustee"), violated the Access to Public Records Act (the "APRA"). Specifically, you allege that you hand-delivered a request for public records to the mail box at the trustee's office, and that you did not receive a response as of October 15, 2003.<sup>1</sup> Your complaint is limited to the allegation that you were entitled to a response within twenty-four (24) hours of mailing your request. Stephen R. Buschmann, attorney for Madison Township, responded in writing to your complaint. A copy of his response is enclosed for your reference.

For the reasons set forth below, it is my opinion that the Trustee did not violate the Access to Public Records Act.

#### BACKGROUND

You allege that on October 10, 2003, at 11:05 a.m., you hand delivered a request for access to public records to the mail box at the Trustee office. You allege that as of October 15, 2003, you had received no response to your request.

In his response, Mr. Buschmann states that "Mr. Birchfield responded to [your October 10, 2003, letter] by E-mail stating that the information would all be provided as quickly as it could be gathered."

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<sup>1</sup> Your complaint is dated October 9, 2003, one day before you allege you made your request for records. For the purpose of this opinion only, I will assume the complaint was signed October 15, 2003, the date you allege you were improperly denied access.

## 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.” IC Code §5-14-3-1. The Trustee is a public agency for the purposes of the APRA. IC 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 Indiana Code section 5-14-3-4. IC 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 periods for producing public 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 requestor that the public records requested are available for his or her inspection.

When a person is physically present in a public agency's office and hand-delivers a written request, the public agency has twenty-four (24) hours from the receipt of that request to respond; the failure to do so constitutes a denial under the APRA. IC 5-14-3-9(a). When a person delivers a request by mail or facsimile, the public agency has seven (7) days from the receipt of that request to respond; again, failure to do so constitutes a denial under the APRA. IC 5-14-3-9(b). Once a denial has occurred under the APRA, a person may file suit in the circuit or superior court in which the denial took place to compel the public agency to disclose the public records requested. IC 5-14-3-9(d).

The issue presented by your complaint is whether, by placing your request in the Trustee's mail slot, the response to your request is appropriately governed by Indiana Code section 5-14-3-9(a), or Indiana Code section 5-14-3-9(b).

A close reading of the relevant statute leads me to conclude that the Trustee had seven (7) days to respond to your request. The statute provides that the twenty-four (24) hour time period applies “when the person making the request is *physically present in the office of the agency*. . . .” IC 5-14-3-9(a) (emphasis added). The spirit, if not the express language of this provision contemplates a direct and contemporaneous communication between the requestor and the agency representative before the twenty-four (24) hour rule is triggered. Delivering your request to a mail slot outside the agency's office does not satisfy this requirement, let alone guarantee that your request would even be received by a representative from that office within twenty-four (24) hours. It is my opinion that the Trustee did not violate the APRA by failing to respond

within twenty-four (24) hours after you delivered your request for public records, because you were not physically present in the office of the agency when you made your request.<sup>2</sup>

According to your complaint on October 10, 2003, you requested various records from the Trustee's office. When you had not received a response as of October 15, 2003, five (5) days after you submitted your request, you filed your complaint with this office. It is my opinion that at the time you filed your complaint the Trustee was not in violation of the APRA because at that time the statutory period for a response had not run.

#### CONCLUSION

It is my opinion that because you were not physically present in the Trustee's office when you submitted your written public records request, the Trustee had seven (7) days to respond to your request. Consequently, it is my opinion that the Trustee did not violate the Access to Public Records Act.

Sincerely,

Michael A. Hurst  
Public Access Counselor

cc: Stephen R. Buschmann, Attorney for Madison Township

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<sup>2</sup> Although the Trustee's e-mail message would likely have satisfied the requirements of the response contemplated by the APRA, even assuming the twenty-four (24) hour period applied, Mr. Buschmann's response did not include the message. However, because I conclude that the Trustee had seven (7) days from the date he received your request to respond, I need not reach the issues of when the message was sent, or what it included. I also note that it appears from the response that you have since been provided with the documents you requested.