

November 6, 2003

Virginia F. Perry
6467 E. Hadley Road
Mooresville, IN 46158

Re: Formal Complaint 03-FC-94: *Alleged Violation of the APRA by the Madison Township Trustee*

Dear Ms. Perry,

This is in response to your formal complaint, received in this office on October 7, 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 you hand-delivered a public records request to the Trustee's office, and after twenty-four (24) hours, you had not received a response. Stephen R. Buschmann, attorney for Madison Township, responded 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 APRA when he had not responded to your request after twenty-four (24) hours had elapsed since you delivered it.

BACKGROUND

You allege that on October 3, 2003, you hand-delivered a request for public information to the Trustee's Office. You further allege that the Trustee failed to respond by October 7, 2003. You then filed your formal complaint with this Office.

In his response to your original complaint, Mr. Buschmann alleges that your October 3, 2003, request for public documents was not made in person. Rather, Mr. Buschmann alleges that you sealed your October 3 request in an envelope addressed to the Trustee and placed it in the Trustee's mail slot, located outside the Trustee's office. Mr. Buschman states the Trustee did not actually receive your request until October 4, 2003. Mr. Buschmann alleges that the Trustee had seven (7) days from receipt of your request to respond.

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. The Trustee's Office is a public agency for the purposes of the APRA. Ind. Code § 5-14-3-2.

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. 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 periods for producing public records, merely for responding to the request. While this response has not been defined under the APRA, the APRA contemplates 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.

In your complaint you contend that the Trustee denied you access to public records by failing to respond to your request within twenty-four (24) hours of receiving your request.

A denial of disclosure by a public agency occurs when the person making the request is *physically present* in the office of the agency, . . . and . . . twenty-four (24) hours elapse after any employee of the public agency refuses to permit inspection and copying of a public record when a request has been made.

Ind. Code § 5-14-3-9(a) (emphasis added). In order for this provision to be applicable the requestor must be physically present in the office. Although you delivered your request to the Trustee's office and deposited it in the mailbox outside the Trustee's office, you were not physically present in the Trustee's office. Therefore, it is my opinion that Indiana Code section 5-14-3-9(a) does not apply to your request, and that the Trustee did not violate the APRA by failing to respond to your request within twenty-four (24) hours.

CONCLUSION

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 access to public records, because your request was not made while you were physically present in the office of the agency; rather, your request was placed in a sealed envelope and deposited in the Trustee's mail slot outside of the Trustee's office.

Sincerely,

Michael A. Hurst
Public Access Counselor

Cc: Stephen R. Buschmann