

September 2, 2003

Ms. Philippa Tolliver
6620 Hemlock
Gary, IN

*Re: 03-FC-67; Alleged Denial of Access to Public Records by the Calumet
Township Trustee's Office*

Dear Ms. Tolliver:

This is in response to your formal complaint, which was received on August 4, 2003. You have alleged that the Calumet Township Trustee's Office ("Trustee's Office") has violated the Indiana Access to Public Records Act ("APRA"), Indiana Code chapter 5-14-3. Specifically, you allege that the Department denied you access to financial records of the Trustee's Office. Ms. Mary Elgin, Township Trustee, responded in writing to your complaint. A copy of her response is enclosed for your reference. For the reasons set forth below, it is my opinion that the Trustee's Office did deny you access to public records in violation of the APRA.

BACKGROUND

According to your complaint, you requested copies of financial records of the Trustee's Office. According to your complaint you hand delivered your written request to the Trustee's Office on July 21, 2003. When you did not receive a response as of July 28, 2003 you filed your complaint with this Office. You contend that as of the date you filed your complaint you had not received any response to your public records request.

In her response, Ms. Elgin stated that she received your request on July 21, 2003 and responded in writing to your request on July 28, 2003. Ms. Elgin stated in her response to this Office that she provided the most recent township guidelines and advised you that the other items would be provided "on or about" August 15, 2003.

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 clearly a public agency for the purpose 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 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.

A public agency is required to make a response to a written request that has been hand-delivered within twenty-four (24) hours after it is received; the failure to do so constitutes a denial under the APRA. Ind. Code § 5-14-3-9(b). Once a denial has occurred under the APRA, a person may file suit in the circuit or superior court of the county in which the denial took place to compel the public agency to disclose the public records requested. Ind. Code § 5-14-39(d).

Under the facts presented, it appears that Ms. Elgin, on behalf of the Trustee’s Office did not respond to your written request for access to public records within the twenty-four (24) hours required under the APRA. While it does not change my opinion in this matter, it should be noted that Ms. Elgin did respond to your request and advised you that the records would be provided on or about August 15, 2003.

As noted above, a public agency is required to communicate with the requestor within twenty-four (24) hours of his request as to the substance of his request, but there is no set time for production. See, Ind. Code §5-14-3-9(a). Further, the agency determines how access will be provided, and a requestor, while he may ask, is not empowered to demand production at any particular time. See, Ind. Code §5-14-3-7(a).

CONCLUSION

It is my opinion that the Calumet Township Trustee’s Office did deny you access to public records with respect to your July 21, 2003 public records request.

Sincerely,

Sandra K. Barger
Acting Public Access Counselor

cc: Ms. Mary Elgin, Calumet Township Trustee's Office