

October 2, 2006

Sent Via Facsimile

Shirley D. Forbes
12345 E. Stalbaum Lane
Wheatfield, IN 46392

Re: Formal Complaint 06-FC-155; Alleged Violation of the Access to Public Records Act by the Wheatfield Township Advisory Board

Dear Ms. Forbes:

This is in response to your formal complaint alleging that the Wheatfield Township Advisory Board ("Board") violated the Access to Public Records Act by refusing to disclose records relating to the township's fire department. I find that the Township Advisory Board denied you records in violation of the Access to Public Records Act.

BACKGROUND

You filed your formal complaint on August 31, 2006, alleging that the Board denied your request for records. Specifically, you had asked for three items: a copy of the lease agreement for the satellite fire station located on Jasper County Road 550 West; a copy of the bank check or document paying for the lease for the satellite fire station; and documents showing the state of Indiana approval for the use of said building as a fire station and all documentation showing that all state requirements have been met. You hand-delivered your request to James Kingma, a member of the Board, on Saturday, August 5.

You allege that Mr. Kingma replied to your request immediately by stating that he needed time to think about it and would advise you by Monday, August 7. Later that same day, Mr. Kingma called you to say that he felt he should not have been given the request for records and referred you to the fire department. Mr. Kingma said that he did not want to antagonize his people against him.

You go on to state that you are concerned about whether the township has the proper legal permits to run a satellite fire station from a sub-leased building. In addition, you state that the fire contract between the fire department and the township requires the filing of quarterly reports with the township board and trustee; hence, you believe that Mr. Kingma should have access and knowledge regarding the lease.

I sent a copy of your complaint to Mr. Kingma. He sent me a written response; I have enclosed a copy of it for your reference. Mr. Kingma does not deny that he told you to ask the fire department for the records. In fact, Mr. Kingma addresses at length the concern you had about whether the fire department could operate a satellite station from the building on Jasper County Road 550, and described alternate arrangements involving a second building in Demotte. His response is otherwise without reference to the requirements of the Access to Public Records Act. Mr. Kingma did state that the quarterly reports of the fire department filed with the township are available to you if you ask for them specifically.

ANALYSIS

Any person may inspect and copy the public records of any public agency, except as provided in section 4 of the Access to Public Records Act (“APRA”). Ind. Code 5-14-3-3(a). A “public record” is any document that is “created, received, retained, maintained, or filed by or with a public agency.” IC 5-14-3-2(m).

If a public agency receives a request for a record in person, the public agency is required to respond within 24 hours or the record is deemed denied. IC 5-14-3-9(a). If a request is made orally, either in person or by telephone, a public agency may deny the request orally. IC 5-14-3-9(c). However, if a request initially is made in writing, or if an oral request that has been denied is renewed in writing or by facsimile, a public agency may deny the request only if the denial is in writing and states the specific exemption or exemptions authorizing the public agency to withhold the record, and the name and title or position of the person responsible for the denial. IC 5-14-3-9(c). If a public agency does not maintain some or all of the records, the public agency should clearly state this in its response.

You requested three items, all records concerning the lease agreement itself or approvals for use of the building as a site for a satellite fire department. The Board has not supplied me with any information that negates your allegation that you were denied the records regarding the lease agreement, payments, and permits. Your request for these records was fairly straightforward. The items you requested are the public records of the Board if they are created, received, retained, maintained, or filed with the Board. Hence, the Board must disclose them to you or deny them in a writing that states the specific exemption that applies to the records. Alternatively, if the Board does not maintain the records, it should tell you that the records are not the public records of the Board. It is not sufficient to refer you to the fire department, even if the fire department is a public agency under the Access to Public Records Act.

Although you explained in your complaint the reason you are seeking the records, you did not state these reasons in your request for records. In any event, unless a specific law makes disclosure of the records conditioned on a particular purpose for the record, a public agency may

not deny a record because the public agency believes that the person's reason for requesting the record is not meritorious. *See* IC 5-14-3-3(a).

The Board should have stated whether it had any or all of the records, and should have disclosed them to you without referring you to another public agency.

CONCLUSION

For the foregoing reasons, I find that the Wheatfield Township Board violated the Access to Public Records Act. I urge the Board to provide you with the opportunity to inspect and copy the public records of the Board without delay, or apprise you whether the records you seek are public records of the Board.

Sincerely,

Karen Davis
Public Access Counselor

cc: James Kingma