

October 19, 2006

Gary J. Graf
Sonjia Graf
6364 N. Kivett Road
Monrovia, IN 46157

Re: Consolidated Formal Complaints 06-FC-162 and 06-FC-170; Alleged Violations of the Access to Public Records Act by the Gregg Township Volunteer Fire Department

Dear Ms. Graf:

This is in response to your formal complaints alleging that Gregg Township Volunteer Fire Department (the "Department") violated the Access to Public Records Act.

BACKGROUND

You have filed several complaints against the Department over the last several weeks. First, Sonjia Graf filed a formal complaint that I received on September 5, 2006, alleging a denial of access to the Department's schedule of fees for services, which she had requested on June 22, 2006. Having deemed this complaint as untimely because it was not filed within 30 days of the date of denial, I assured Ms. Graf that I would issue an informal inquiry response.

Ms. Graf then filed a formal complaint on September 19, 2006, alleging a denial of access to the same fee schedule. I assigned this complaint the number 06-FC-162. Relative to this complaint, Ms. Graf alleged that she had renewed her request for the fee schedule on September 5, but she has never received the fee schedule. I have consolidated the informal inquiry response to the untimely complaint with 06-FC-162, since they are essentially the same allegation.

Ms. Graf filed a formal complaint as recently as October 18, 2006, alleging that the Department had charged an excessive copying fee for copies of financial records. The documentation sent to the Graf by the Department indicated that it had assessed the Graf a copy fee of \$2 per page for 37 pages, for a total of \$74.00.

Mr. Graf filed a formal complaint with the Office of the Public Access Counselor on October 4, 2006, to which I assigned the number 06-FC-170. In this formal complaint, Mr. Graf alleges that he had requested from the Department seven records: the general ledger; cash receipts; disbursements journal; check register; financial statements; bank statements; and fire service contracts, all for fiscal years 2002, 2003, 2004, and 2005. In addition, the same request sought the full and complete details of the “Response Time Study” that had been conducted, according to the Department. Mr. Graf alleges that the responsive letter, which he attaches, amounted to a denial of access.

I have sent copies of each complaint to the Department. The specific allegations and the Department’s response will be developed more fully below.

ANALYSIS

Provisions of the Access to Public Records Act

The Access to Public Records Act states:

[G]overnment is the servant of the people and not their master. Accordingly, it is the public policy of the state that all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees. Providing persons with the 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. This 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.

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). No request may be denied because the person making the request refuses to state the purpose of the request, unless such condition is required by other applicable statute. IC 5-14-3-3. A public agency may not deny or interfere with the exercise of the right stated in subsection (a). IC 5-14-3-3(b).

A public agency shall regulate any material interference with the regular discharge of the functions or duties of the public agency or public employees. IC 5-14-3-7(a). However, the foregoing does not operate to deny to any person the rights secured by section 3 of the Access to Public Records Act. IC 5-14-3-7(c).

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 the public agency receives a request for a record via U.S. Mail or facsimile, the public agency is required to respond within seven calendar days, or the request is deemed denied. IC 5-14-3-9(b). 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 if the denial is in writing or by facsimile, and the denial includes the 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). The records must be provided within a reasonable period of time, since the APRA does not prescribe specific timeframes within which records must be produced.

A public agency may charge a fee for copies of its public records. IC 5-14-3-8. For a public agency that is not a state agency, the fiscal body of the public agency, or the governing body, if there is no fiscal body, shall establish a fee schedule for the certification, copying, or facsimile machine transmission of documents. IC 5-14-3-8(d). The fee may not exceed the actual cost of copies and the fee must be uniform throughout the public agency and uniform to all purchasers. *Id.* “Actual cost” means the cost of paper and the per-page cost for use of copying equipment and does not include labor costs or overhead costs. *Id.*

06-FC-162

Ms. Graf has complained that the Department has refused to provide a copy of the fee schedule setting forth the amount charged for its fire protection services. If maintained by the Department, the fee schedule would be a disclosable public record. The Department provided a response to both the informal complaint as well as the formal complaint. In a September 20 letter from Mark Greatbatch, Assistant Fire Chief, the Department provides background information regarding your past dealings with the Department and the specific issues concerning how the Department has operated. In relevant part, the Department states that your June 22 request was referred to Mr. Greatbatch. Once Mr. Greatbatch contacted Ms. Graf, he suggested that a meeting would be in order to provide the information, and then asked what Ms. Graf’s “stake in all of this” was in reference to a remonstrance petition. As Ms. Graf did not have appropriate information about her taxes, Mr. Greatbatch felt it would be important to meet with her to prevent any miscommunication. After several attempts to schedule the meeting with her, the Department reports that no additional communication was received. In addition, the Department was concerned that the Department, with its shift personnel handling the records, would provide incorrect records, as occurred with a request for the same record from a Ms. Ulrey.

In an additional response to your complaint, Chief David Reese stated that he had now copied and provided the fee schedule, but reiterated the concern that Mr. Greatbatch expressed concerning obtaining the correct records.

It is my opinion that the Department did not have the authority to insist that you meet with Assistant Chief Greatbatch in order to receive the records, so that he could address your

underlying issues. There is nothing in the APRA that provides that a requester must agree to meet with a public agency. In the event that the public agency is seeking clarification regarding what record is being requested, the public agency is free, of course, to call the requester and ask for clarification. However, the Department has not alleged that it was confused about *what* record Ms. Graf had requested, but rather for what purpose she wanted the record. In addition, the Department could have invited Ms. Graf to meet with the Department to address her concerns or to prevent any miscommunication without making such a condition of receiving records. Although not stated as a condition, it appears that the Department was not ready to provide the records unless Ms. Graf called to respond to the invitation to meet. No record was sent because you did not get in contact with the Department. This does not comport with IC 5-14-3(a) or (b).

I also find unconvincing the Department's contention that the requester must meet with or receive records from solely Chief Reese or Assistant Chief Greatbatch in order to obtain the correct record. Again, leaving a message with the requester that a marked envelope with the record requested can be obtained from the Department during the Department's regular hours of business should not pose a barrier to obtaining the correct record.

Copying Fee

With respect to the \$2.00 per page copying fee, I find that the fee is excessive under the Access to Public Records Act. I spoke with the Department after receiving your complaint. The Department believed that because it is a nonprofit entity, it is not limited by the Access to Public Records Act's fee limitations. However, the Department has not otherwise challenged its need to comply with the Access to Public Records Act, and it is my opinion that the Department is a public agency under IC 5-14-3-2(1)(2)(C). Therefore, the copying fee must be adopted by the fiscal unit for the Department, and may not exceed the actual cost of copies. In my opinion, two dollars per page must exceed the actual cost of copies, which is the cost of paper and the per-page cost for use of the copying equipment.

06-FC-170

In response to Gary Graf's request for financial records of the Department, Chief Reese sent a response letter stating "I request that you check with Dora in an effort to combine your requests. The volume of the two requests will take me several months to accomplish and I do not believe that would be of much value to either of you. If however this is not a viable option please let me know and I will get to your request as soon as I have time available."

In response to the formal complaint, Chief Reese stated that Mr. Graf's complaint is an attempt at harassment. Chief Reese disputes that the letter was a denial of the records, but was merely an attempt to consolidate the copying effort between Mr. Graf and Ms. Dora Brown. Chief Reese believes that Mr. Graf and Ms. Brown are working together and his suggestion was legitimate. Chief Reese also explained that the time to gather and copy records is limited because as a volunteer, Chief Reese does not have regular hours and he is also a state conservation officer.

For reasons similar to those in this advisory opinion with respect to 06-FC-162, I find that the Department could not respond that the Department encouraged Mr. Graf to work with another requester to “combine” their requests. The Department has not provided me with information regarding whether the Brown copies had already been provided. In addition, once the records are located, two copies could be provided with little additional time, or, in the alternative, both requesters could be invited to make copies on the Department’s own equipment.

The response letter of the Department did state that it would locate responsive records but would “get to your request as soon as I have time available.” This is not denial *per se*, but suggests that the records would be gathered whenever the opportunity presented itself once other duties were completed. Although the Department may regulate material interference with the other duties and functions of the Department, it must locate and compile responsive records within a reasonable period of time.

CONCLUSION

For the foregoing reasons, I find that the Gregg Township Volunteer Fire Department violated the Access to Public Records Act.

Sincerely,

Karen Davis
Public Access Counselor

cc: Chief David Reese
Assistant Chief Greatbatch