

February 24, 2006

Sent Via Facsimile

Richard Shirey
Center Township Trustee
1200 E. Main Street
Muncie, IN 47305

Re: Formal Complaint 06-FC-26; Alleged Violation of the Access to Public Records Act by Ball Memorial Hospital

Dear Mr. Shirey:

This is in response to your formal complaint alleging that Ball Memorial Hospital (“BMH”) violated the Access to Public Records Act (“APRA”) by failing to respond to your request for records concerning compliance with a supervising hospital agreement. I find that Ball Memorial Hospital did not violate the Access to Public Records Act because it is not a public agency.

BACKGROUND

You sent a letter to the Hospital dated December 27, 2005, seeking unspecified records concerning BMH’s compliance with its hospital supervising agreement. This agreement is on file with the State Emergency Medical Services Commission. You have a copy of the agreement; you seek records concerning EMS audits, according to your complaint. You filed your formal complaint with the Office of the Public Access Counselor on January 25, 2006, contending that you were denied access to BMH’s records. Although you do not state this in your complaint, it is apparent that you did not receive a response to your records request from the Hospital.

I sent a copy of your formal complaint to BMH. In response Mr. Timothy Lawson, counsel for BMH, replied that BMH is not subject to the APRA because BMH is not a public

agency under any of the definitions of public agency in Ind. Code 5-14-3-2. I have enclosed a copy of BMH's response for your reference.

ANALYSIS

Any person may inspect and copy the public records of any public agency during the agency's regular business hours, except as provided in section 4 of the APRA. Ind. Code 5-14-3-3(a). A public agency that receives a request for a record by U.S. Mail or facsimile is required to respond within seven (7) days of its receipt of the request, or the request is deemed denied. IC 5-14-3-9(b).

A public agency means, in relevant part:

(1) Any board, commission, department, division, bureau, committee, agency, office, instrumentality, or authority, by whatever name designated, exercising any part of the executive, administrative, judicial, or legislative power of the state.

(2) Any:

(A) county, township, school corporation, city, or town, or any board, commission, department, division, bureau, committee, office, instrumentality, or authority of any county, township, school corporation, city, or town;

(B) political subdivision (as defined by IC 36-1-2-13); or

(C) other entity, or any office thereof, by whatever name designated, exercising in a limited geographical area the executive, administrative, judicial, or legislative power of the state or a delegated local governmental power.

(3) Any entity or office that is subject to:

(A) budget review by either the department of local government finance or the governing body of a county, city, town, township, or school corporation; or

(B) an audit by the state board of accounts.

IC 5-14-3-2(1).

You have the burden of proving that BMH is a public agency within the meaning of the Public Records Act. *See Perry County Development Corporation v. Kempf*, 712 N.E.2d 1020 (Ind. Ct. App. 1999). You have not stated why you think that BMH is a public agency. BMH is not a county hospital under IC 16-22. Hence, it is not a public agency on that basis. The only remaining basis under which BMH would be a public agency is where it is subject to an audit by the state board of accounts. *See* IC 5-14-3-2(1)(3)(B).

According to the state board of accounts, BMH has filed an annual report stating its expenditures of public funds. Upon analysis of that report, the state board of accounts has determined that BMH is *not* subject to an audit.

Unless BMH is subject to an audit by the state board of accounts, or otherwise meets the definition of a "public agency," it is not subject to the Access to Public Records Act. You have not sustained your burden to show that BMH is a public agency. Because BMH is not a public

agency, BMH is not required to respond to your request for records or disclose any records to you.

CONCLUSION

I find your complaint against Ball Memorial Hospital to be without merit because Ball Memorial Hospital is not a public agency within the meaning of “public agency” in the Access to Public Records Act.

Sincerely,

Karen Davis
Public Access Counselor

cc: Timothy Lawson