

February 26, 2007

Harley T. Schultz
105 W. Plum Street
Centerville, IN 47330

Susan Fording
216 W. Main Street
Centerville, IN 47330

Re: Consolidated Formal Complaints 07-FC-22 and 07-FC-26; Alleged Violation of the Access to Public Records Act by the Centerville Center Township Public Library

Dear Mr. Schultz and Ms. Fording:

This is in response to your formal complaints alleging that the Centerville Center Township Public Library ("Library") violated the Access to Public Records Act. I find that the Library has made reasonable efforts to provide its public records in a timely manner.

BACKGROUND

Mr. Schultz filed a formal complaint on January 25, alleging that he had requested financial records on January 10, 2007. I assigned complaint #07-FC-22 to this complaint. As of January 24, 2007, he had not received the records. The Library Director Marie Bunch had called him to let him know that some of the records would be available on January 25. Because Ms. Bunch had not yet supplied all the records as of January 25, she violated the Access to Public Records Act. The request on January 10 was for:

- Ledger of all expenditures for the 2006 calendar year for the Library, including all the documentation to justify said expenses.
- Checking and savings accounts statement for all months in 2006 for the Library.
- Copies of all the income receipts for the year 2006 (taxes, donations, memorials, fines, etc.) for the Library.

Mr. Schultz does not specify what records were or were not available on January 25. In her response to the complaint, Ms. Marie Bunch, Library director, stated that after receiving the request, she telephoned Mr. Schultz on January 16 to let him know that she would be compiling the requested records and would call him when the request was filled. Ms. Bunch asserted that she called Mr. Schultz on January 24 to notify him that most of the records were ready at the front desk for him to come in and copy. Mr. Schultz seemed disturbed that he would be required to make the copies himself.

Ms. Fording alleges that on January 9 she requested minutes for board meetings of December 1992, November 1995, December 1995, and October 2001. Ms. Fording claims that her requests have been ignored. The attachments to the minutes have not been provided nor have the four sets of minutes referred to in the complaint. In a second complaint received in my office on February 15, Ms. Fording reiterated the same complaint, but said that when she spoke with Marie Bunch, Ms. Bunch indicated that the handouts had been mistakenly buried in a folder. I assigned this complaint #07-FC-26.

I sent copies of the complaints to the Library. In her response to 07-FC-22, Ms. Bunch explained that in the fifteen preceding years as library director, she had never received a request from any citizen to view any records. Since the termination of Cindy Johnson on November 10, 2006, the Library has fielded over 14 requests for audited materials. No request has been denied, and Ms. Bunch works the requests in the order received and spends several hours a day to fill the requests. Because Mr. Schultz's requests involve current records and not records audited and stored in the basement, she has put his requests before others that were received earlier.

To Ms. Fording's complaint, Ms. Bunch stated that she has tried to the best of her ability to complete her written requests and to get them to her in a timely manner. The citizens who have sent requests, at least 14, have requested records numerous times and expect access almost immediately. She has notified Ms. Fording by letter and telephone when items are ready and have explained why there were no minutes for December 1992 and 1995: meetings did not occur during those months. Ms. Bunch has not been able to locate November 1995 minutes in storage. Ms. Bunch also stated that she has filled several requests by allowing the public to review the materials and make the copies on the library's equipment. She has devoted two hours per day to compiling and fulfilling the requests.

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). If a public agency receives a request for a record in person or by telephone, 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).

The time for response contained in section 9 of the Access to Public Records Act is not necessarily the time within which records must be provided. There are no specific timeframes in the APRA; so long as the public agency provides the records within a reasonable period of time,

it cannot be said that the agency has “de facto” denied the records. Circumstances such as how old the records are, whether the records must be reviewed to determine whether they can be disclosed in whole or in part, and whether the records are in storage are relevant to the determination of reasonableness. In addition, a public agency may regulate material interference with the regular discharge of the duties and functions of the public agency or public employees. IC 5-14-3-7(a).

In reviewing the response of the Library, it is my opinion that no denial of access has occurred with either complaint. In particular, with respect to the records requested in 07-FC-22, the requests involved several categories of records, and many of the records were available within two weeks of the receipt of the request. A public agency may provide access to its records by allowing the person to make copies on the agency’s own equipment. *See* IC 5-14-3-3(b). It seems that the expectation that Ms. Bunch would have to provide all the records rather than just part of the Schultz request is not a reasonable one. The public access counselor has often suggested that public agencies fielding multiple requests for records provide some of the records that are immediately available prior to those that must be further researched. The complaint #07-FC-22 is without merit. The Library has provided the records in a fairly timely manner, and within the resources that are available, given that the Library is devoting two hours per day to the many requests.

With respect to the Fording complaint, some of the minutes of the meetings are not available because no meetings occurred. Ms. Bunch indicated that she had explained this during her production of the records. A public agency is not required to create a record that does not exist. It appears from the documentation provided by the Library that Ms. Bunch wrote you shortly after your complaint was filed and produced 32 pages of records.

Again, the Library has not denied the Fording records. Given the unusual number of requests sent in a short period of time and Ms. Bunch’s continued work to fulfill the requests on a daily basis, I find that the Library has not denied records to either complainant.

CONCLUSION

For the foregoing reasons, I find that the Centerville Center Township Public Library has complied with the Access to Public Records Act.

Sincerely,

Karen Davis
Public Access Counselor

cc: Marie Bunch