

October 30, 2007

Renee Miller  
8135 South Rockport Road  
Bloomington, Indiana 47403

*Re: Formal Complaint 07-FC-304; Alleged Violation of the Access to Public Records Act by the Indian Creek Township Trustee of Monroe County*

Dear Ms. Miller:

This is in response to your formal complaint alleging the Indian Creek Township Trustee (“Trustee”) violated the Access to Public Records Act (“APRA”) (Ind. Code 5-14-3) by not providing you access to records. A copy of the Trustee’s response is enclosed for your reference. It is my opinion that the Trustee did not violate the APRA.

#### BACKGROUND

In your complaint you allege that on September 17 you sent an electronic mail message to the Trustee requesting access to records, namely records regarding expenditures relating to fire service and attorney’s fees. Receiving no response, you sent a subsequent email message on September 26 asking for a response. You mailed your complaint to this office on September 27, and I receive it on October 2. You requested priority status but did not allege any of the reasons for priority status listed in 62 IAC 1-1-3, so priority status was not granted.

After your complaint, you communicated with Amy Miller from my office several times. On October 5 you indicated to her via email that you had been at the Trustee’s office and had been granted access to some but not all of the records you requested. You copied Ms. Miller on your October 11 communication to the Trustee in which you indicated you had received the records she sent but that they were not responsive to your request. The Trustee responded that she had provided you the records you had requested and offered to allow you to view the “ledger book” once it was balanced, in the next ten days. You replied to her that she had not provided you with the copies. You copied Ms. Miller on subsequent email messages, but I cannot understand the subject matter of them since they seem to be responses to previous communication from the Trustee or furtherance of oral communication between you and the Trustee.

The Trustee responded to your complaint by letter dated October 18 from attorney Guy Loftman and Trustee Linda Hollingsworth. The Trustee contends she received your request on September 17 and telephoned you to indicate she would be sending the disclosable financial records through August 2007. She further indicated she would not yet be sending the September records because they were not complete but would provide those records after October 11 when the bank statement was received. The Trustee notified you on October 18 that the September records were available for you to retrieve them from the office. The Trustee further contends the records produced were in the categories in which they were kept. No additional arithmetic was done by the Trustee pursuant to any request. Regarding your request as to the trustee's intentions related to fire protection, the Trustee indicated there were no responsive records.

## 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 is clearly a public agency for the purposes of the APRA. I.C. §5-14-3-2. Accordingly, any person has the right to inspect and copy the public records of the Trustee during regular business hours unless the public records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. I.C. §5-14-3-3(a).

A "public record" means any writing, paper, report, study, map, photograph, book, card, tape recording or other material that is created, received, retained, maintained or filed by or with a public agency. I.C. §5-14-3-2.

A request for records may be oral or written. I.C. §5-14-3-3(a); §5-14-3-9(c). If the request is made when the requester is physically present in the office, the public agency must respond within 24 business hours. I.C. §5-14-3-9(a). If the request is delivered by mail or facsimile and the agency does not respond to the request within seven days of receipt, the request is deemed denied. I.C. §5-14-3-9(b). The response need not be made in writing unless the request is made in writing and the request is being denied by the agency. I.C. §5-14-3-9(c).

A response could be an acknowledgement that the request has been received and information regarding how or when the agency intends to comply. There are no prescribed timeframes when the records must be produced by a public agency. A public agency is required to regulate any material interference with the regular discharge of the functions or duties of the public agency or public employees. I.C. §5-14-3-7(a). However, section 7 does not operate to deny to any person the rights secured by section 3 of the Access to Public Records Act. I.C. §5-14-3-7(c). The public access counselor's office has stated that records must be produced within a reasonable period of time, based on the facts and circumstances. Consideration of the nature of the requests (whether they are broad or narrow), how old the records are, where the records are kept, and whether the records must be reviewed and edited to delete nondisclosable material are necessary to determine whether the agency has produced records within a reasonable timeframe.

Here you requested the records via electronic mail on September 17. The Trustee responded to your request upon receipt and within the seven days allowed by the APRA. I.C.

§5-14-3-9(b). The Trustee indicated the records would be provided and mailed those to you on October 4, which in my opinion is a reasonable amount of time to assemble and send the records. Records must be produced in a reasonable amount of time, keeping in mind the Trustee has a duty to regulate any material interference with the regular discharge of functions or duties of the office. I.C. §5-14-3-7(a).

Regarding the records for September 2007, the Trustee indicated those records were not complete. I always suggest public agencies estimate how long production might take and keep the requester informed if the request will take some time to fulfill. Here, the Trustee told you it would take some time to fulfill the request because she was awaiting the bank statement to complete the records. Once the Trustee received the bank statement, she prepared the records for your request within one week. It is my opinion this was a reasonable amount of time to produce the requested records.

My opinion is based upon my understanding of the facts as outlined by both the Trustee and you. To the extent there are records to which you have requested access but have not received access, the Trustee has a duty to allow you to inspect and copy those records unless an exception to disclosure exists. I.C. §5-14-3-3(a). I am unclear whether any part of your request remains unanswered.

#### CONCLUSION

For the foregoing reasons, it is my opinion the Trustee did not violate the APRA.

Best regards,



Heather Willis Neal  
Public Access Counselor

cc: Linda Hollingsworth, Indian Creek Township Trustee