

November 13, 2007

Christine Brown
215 North 2nd Street
Boonville, Indiana 47601

Re: Formal Complaint 07-FC-316; Alleged Violation of the Access to Public Records Act and the Open Door Law by the Warrick County Ohio Township Trustee

Dear Ms. Brown:

This is in response to your three formal complaints alleging the Warrick County Ohio Township Trustee (“Trustee”) violated the Access to Public Records Act (“APRA”) (Indiana Code 5-14-3) and the Open Door Law (“ODL”) (Ind. Code 5-14-1.5). Because the complaints are against the same public agency, I have consolidated them to be addressed in this opinion. I have enclosed a copy of the Trustee’s response to your complaints for your reference. It is my opinion the Trustee has not violated the Open Door Law or the Access to Public Records Act.

BACKGROUND

You first allege that on September 18, 2007 the Trustee and Township Board conducted a meeting; you allege that not all the persons who tried to attend the meeting could do so. I am assuming you are alleging the meeting location was too small for the number of individuals in attendance. You further allege that those who did attend were unable to hear and see the proceedings. You allege that while another location for the meeting was offered, the Board denied the request to change locations.

In your second complaint, you allege you submitted to the Trustee a request to see “the books” on September 18. You also make an allegation regarding copies of “vacuum books.” Although it is not clear, it is my understanding you are alleging you have been denied access to these records.

The nature of your third complaint relates to time for production of records. You seem to allege that the Trustee has violated the APRA by asking you to make an appointment to inspect the requested records. You further allege in the request that the Trustee would not confirm the date of the next meeting.

The Trustee responded to your complaint by letter dated October 29. The Trustee confirms that a meeting was held on September 18 in the community room of the Ohio Township Fire Department Building. She confirms there was greater than anticipated attendance and the accommodations were tight, but she contends no person was denied access to the meeting. Prior to the start of the meeting, a recommendation was made to move the meeting to the adjoining garage, but the Board rejected the recommendation because there were a number of elderly people in attendance and the garage had no air conditioning or seating. The conference tables were removed from the community room to create more space for those in attendance. The Trustee further indicates that you were escorted from the meeting by a deputy of the Warrick County Sheriff's Department for your disruptive behavior.

Regarding your request for access to records, the Trustee indicates she received your request for records on September 18. On September 19 she replied to the request by telephone and indicated she would respond in writing once she received information she had requested from the State Board of Accounts. The Trustee then sent you a letter on September 22, seeking clarification regarding the records you requested. You responded by letter dated September 26. The Trustee contends that you still did not state your request with reasonable particularity as required by the APRA. Regarding the "vacuum books," the Trustee clarifies that, with approval from the Board, she purchased two vacuums for use by the Fire Department and Trustee's office. She did not receive the manual covers which would provide suitable identification for inventory purposes. She has requested those but still has not received the books.

The Trustee contends that your requests still lack reasonable particularity to help her locate the requested records. She further indicates that many of the records you request, which date back five years, are not kept in the small Trustee's office. The Trustee further contends that you have not been denied access to records. She indicates it is her practice to make appointments with individuals wishing to inspect records so that inspection may be done in an uninterrupted fashion.

Regarding your complaint that the Trustee has not provided you with information related to the next meeting, the Trustee indicates the next meeting of the Board was scheduled for October 29, and proper notice was provided.

ANALYSIS

Part I

It is the intent of the Open Door Law that the official action of public agencies be conducted and taken openly, unless otherwise expressly provided by statute, in order that the people may be fully informed. I.C. §5-14-1.5-1. Except as provided in section 6.1 of the Open Door Law, all meetings of the governing bodies of public agencies must be open at all times for the purpose of permitting members of the public to observe and record them. I.C. §5-14-1.5-3(a).

The Township Board is clearly a governing body of a public agency for the purposes of the Open Door Law. I.C. §5-14-1.5-2. As such, except where authorized by statute, the

meetings of the Board must be conducted openly and with proper notice to the public. I.C. §5-14-1.5-3.

The question here is whether a meeting held in a room that did not accommodate all the members of the public who appeared to observe the meeting violated the Open Door Law. While the ODL does provide that meetings of public agencies must be held in accessible facilities as described in I.C. §5-14-1.5-8, it does not provide specific requirements for capacity of meeting location. Furthermore, there is no provision of the ODL indicating it has been violated when a meeting location does not accommodate every member of the public who wishes to attend. *Opinion of the Public Access Counselor 07-FC-220*.

But the public agency must be mindful of the public policy of the ODL when considering meeting location: It is the intent of the Open Door Law that the official action of public agencies be conducted and taken openly, unless otherwise expressly provided by statute, in order that the people may be fully informed. I.C. §5-14-1.5-1. This office has previously addressed meeting location capacity in *Opinion of the Public Access Counselor 00-FC-13* and *03-FC-138*. In the former, the Counselor found the public agency violated the spirit of the ODL, though not the letter, when it refused to change meeting location upon request and upon receiving information its regular meeting room would not accommodate those who planned to attend. *Opinion of the Public Access Counselor 00-FC-13*. In the latter, the Counselor refused to find a violation of the letter or the spirit of the ODL when the public agency held its meeting in its regular meeting location and did not move the meeting when the room was filled to capacity. There the public agency provided a public address system so those in the overflow area could hear the meeting. *Opinion of the Public Access Counselor 03-FC-138*.

While no Indiana case law addresses the issue at hand, other jurisdictions have refused to require public agencies to hold meetings in locations sufficient for every member of the public to attend. In *Guitierrez v. City of Albuquerque*, 631 P.2d 304 (N.M. 1981), the New Mexico Supreme Court held that as long as the public agency makes reasonable efforts and allows members of the public to attend meetings, the open door law is satisfied. In *Gerwin v. Livingston County Bd.*, 802 N.E.2d 410 (Ill. Ct. App. 2003), the Illinois Court of Appeals rejected the assertion that government actions would be invalidated if room capacity were exceeded and some members of the public denied access. The court said that if enough members of the public came to the meeting, “the business of government would come to a standstill for lack of venue.” *Id.* at 417.

Here you allege that Board held a meeting that could not be attended by all those who attempted to attend. You further allege that not all those in attendance could hear or view the proceedings. While the Board may move a crowded meeting to a new location, the Board was not required by the ODL to do so. The Board weighed the considerations of a larger space with those of no seating or air conditioning. The Trustee contends that no person was denied access to the meeting. Further, the Board removed tables from the room to accommodate more attendees, which I believe was a reasonable effort to allow as many people to attend as possible. It is my opinion the Board did not violate the Open Door Law when it did not move a crowded meeting to another location.

Part II

The public policy of the APRA states, "(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 request for records may be oral or written. I.C. §5-14-3-3(a); §5-14-3-9(c). 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). If the request is delivered in person at the office of the agency and the agency does not respond within 24 hours, the request is deemed denied. I.C. §5-14-3-9.

A request for access to records must identify with reasonable particularity the records being requested. I.C. §5-14-3-3(a). "Reasonable particularity" is not defined in the APRA. "When interpreting a statute the words and phrases in a statute are to be given their plain, ordinary, and usual meaning unless a contrary purpose is clearly shown by the statute itself." *Journal Gazette v. Board of Trustees of Purdue University*, 698 N.E.2d 826, 828 (Ind. App. 1998). Statutory provisions cannot be read standing alone; instead, they must be construed in light of the entire act of which they are a part. *Deaton v. City of Greenwood*, 582 N.E.2d 882 (Ind. App. 1991). "Particularity" as used in the APRA is defined as "the quality or state of being particular as distinguished from universal." *Merriam-Webster Online*, www.m-w.com, accessed July 18, 2007. In general terms, the guideline I use for "reasonable particularity" is this: if the agency can determine precisely what records the requester is seeking, the request is likely made with reasonable particularity.

Here, your request lists a number of items of information you seek. Your request does not, though, list the specific records you seek. For instance, in one item, you request the following: "Funds (What is available and where they are)." In another item, you request the following: "Monies that has been distributed and to the locations persons/business's it has been distributed to"[sic]. The APRA does not require an agency to answer questions. Further, nothing in the APRA requires a public agency to *develop* records or information pursuant to a request. The APRA requires the public agency to *provide access* to records already created. Here, I cannot understand what records you are seeking when you request "Funds" or what specific records you request when you indicate "Monies . . ." Either of these items could refer to any number of records. I do not believe the Trustee violated the APRA by asking you to identify with reasonable particularity the records you request.

Part III

You further allege that the Trustee may not require you to make an appointment to inspect the records of the agency but that the records must always be available for inspection. While the APRA provides that the records of an agency must be made available for inspection

and copying during regular business hours, that provision does not mean that at any time a person wishes to view records, he or she may appear and demand that the records be made immediately available. An agency has 24 hours to respond to a request made in person at the office of the agency. I.C. §5-14-3-9. It is common and acceptable practice for an agency to set an appointment for a requester to inspect records at a time that is mutually convenient. If an agency were in effect denying access to records by not working with the requester to find a mutually convenient time for inspection, that could be a violation of the APRA. But I do not believe that to be the case here. As such, it is my opinion the Trustee has not violated the APRA by asking you to set an appointment to inspect the records.

Regarding your allegation the Trustee would not confirm for you the next meeting date, the Trustee contends the notice regarding the meeting was posted in accordance with the ODL, which requires notice of meetings to be posted 48 hours in advance of the meeting, excluding weekends and holidays. I.C. §5-14-1.5-5. Nothing in the ODL requires the Trustee to notify you of a meeting date prior to the required time for notice to be posted.

CONCLUSION

For the foregoing reasons, it is my opinion the Trustee has not violated the Open Door Law or the Access to Public Records Act.

Best regards,



Heather Willis Neal
Public Access Counselor

cc: Lorraine Wittenbraker, Ohio Township Trustee