

March 12, 2007

Arthur Newbury Jr.
P.O. Box 319
89 E. Jackson
Wheatfield, IN 46392

Re: Formal Complaint 07-FC-33; Alleged Violation of the Access to Public Records Act by the Wheatfield Township Trustee

Dear Mr. Newbury:

This is in response to your formal complaint alleging that the Wheatfield Township Trustee ("Trustee") violated the Access to Public Records Act by failing to respond to your request for records. I find that the Wheatfield Township Trustee has violated the Access to Public Records Act.

BACKGROUND

You asked for information from the Trustee regarding a "T. Ellis" who you believe to be a contractor or employee of Wheatfield township. You allege that you have not received a response.

I sent a copy of your complaint to Mr. John Sumara, but have not received a written response. When I contacted Mr. Sumara by telephone, he stated that he intended to send you and other requesters a letter sometime next week giving you the information about T. Ellis, who is his daughter and an employee of the township. Mr. Sumara also admitted that he had not responded to your request at all. Mr. Sumara stated that he brings the township records to every township meeting for you to examine, and believes this should be sufficient.

ANALYSIS

The policy of 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). 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). A response may be an acknowledgment that the request was received and some indication of how or when the agency intends to comply. The public agency should produce copies of the records within a reasonable period of time.

The Wheatfield Township Trustee violated the Access to Public Records Act when he failed to respond to your request within the timeframes required under section 9 of the Access to Public Records Act. In addition, Mr. Sumara should have provided the information within a reasonable period of time. Your request was specific: you requested information from one employee’s personnel file, such as name, compensation, and job training background. Providing the requested records or information after March 9 is unreasonable considering it was requested the first week of February.

CONCLUSION

For the foregoing reasons, I find that the Wheatfield Township Trustee violated the Access to Public Records Act. I encourage Mr. Sumara to provide the information on March 12, 2007.

Sincerely,

Karen Davis
Public Access Counselor

cc: John Sumara