

December 5, 2007

Cheryl Munson
6707 West Rock East Road
Bloomington, Indiana 47403

Re: Formal Complaint 07-FC-343; Alleged Violation of the Access to Public Records Act by the Monroe County Indian Creek Township Trustee

Dear Ms. Munson:

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

BACKGROUND

You are a member of the Indian Creek Township Board. In your complaint you allege you requested from the Trustee on October 10, 2007 copies of a number of records you needed to review prior to the November 12 meeting of the Township Board. You filed this complaint on November 7, alleging denial of access. You include copies of several communications between you and the Trustee over the past several months.

The Trustee responded to your complaint by an undated letter received in this office on November 28. The Trustee contends that she cannot provide copies of records not maintained in her office, namely missing records from past administrations. The Trustee further contends she has provided many of the records you have requested. Regarding your request for ledger books, the Trustee indicates that she makes those available for inspection and copying after the bank statements are received and accounts are reconciled to minimize the risk of circulating errors. Regarding copies of checks, the Trustee contends that contemporaneous copying of each check is unduly burdensome to normal operations of the Trustee’s office.

The Trustee further indicates that her office has provided hundreds of records in response to requests from you. The Trustee has gone to an office supply store to make oversized copies. Furthermore, the Trustee’s copier malfunctioned because of the extensive requests. The Trustee

further indicates that because of the volume of requests for records, the Trustee has now designated a time each month during which to respond to requests.

ANALYSIS

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." I.C. §5-14-3-1. Any person has the right to inspect and copy the public records of a public agency 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).

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 made orally or in person at the office of the agency and the agency does not respond to the request within 24 hours of receipt, the request is deemed denied. I.C. §5-14-3-9(a). If the request is delivered by mail, facsimile, or electronic mail 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).

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 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, 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 have requested a number of records from the Trustee. The Trustee contends she has provided records responsive to your request to the extent they are maintained by the office. Regarding your complaint that the Trustee should locate records of past administrations that are not currently maintained by the Trustee, this is outside the scope of the APRA. While records retention rules may require the Trustee to maintain those records, a public official often cannot maintain records lost or destroyed by a past administration. If records which the Trustee is required to maintain but does not currently maintain are available from another public agency or office, the Trustee and the public would be well served by the Trustee obtaining copies of those records. But the APRA does not require such. And locating those records may be something the Trustee simply does not have the resources to do until other duties are addressed.

Regarding the Trustee's insistence she has provided you with the records you have requested which the Trustee maintains, I see no evidence the Trustee has violated the APRA. The Trustee must make available for inspection and copying records maintained by the office unless the records are subject to exemption from disclosure under the APRA. I.C. §5-14-3-3. I find no evidence the Trustee has denied any request for access to records.

Regarding your complaint that the Trustee does not provide copies of the ledger book until the book has been reconciled with the bank statements, the ledger book is a record available for inspection and copying regardless of when it is reconciled. You may request a copy of the ledger book at any time. The issue here is time for production of records. 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).

Here, the Trustee has indicated that limited resources and numerous requests for records have led her to establish a time each month when she provides records in response to requests. While I am not willing to suggest that once a month is always an appropriate interval for responding to requests for access to records, it may be appropriate here when considering the factors. The Trustee is an office with limited personnel resources, the requests to the office have been so voluminous as to cause a copy machine to malfunction, the Trustee maintains many records that are received or created on a monthly basis, and the Trustee at times must leave the office to make the requested copies. Being mindful of the charge in Section 7 to regulate any material interference with the regular discharge of duties while not denying access to records, I would agree that at this point this is a reasonable interval for responding to requests for records.

CONCLUSION

For the foregoing reasons, it is my opinion the Monroe County Indian Creek Township Trustee did not violate the Access to Public Records Act.

Best regards,



Heather Willis Neal
Public Access Counselor

cc: Linda Hollingsworth, Monroe County Indian Creek Township Trustee
Guy Loftman, Attorney for Indian Creek Township