

March 22, 2007

Gregory Terhune
6432 E. Edna Mills Drive
Camby, IN 46113

Re: Formal Complaint 07-FC-45; Alleged Violation of the Access to Public Records Act by the Madison Township (Morgan County) Trustee and Board

Dear Mr. Terhune:

This is in response to your formal complaint alleging that the Madison Township Trustee and Board (collectively, "Township") violated the Access to Public Records Act by taking an unreasonable amount of time to produce minutes of the January 2 meeting, and by refusing to produce the minutes of the January 16 meeting until they were approved at a meeting on March 21. I find that the Township violated the Access to Public Records Act and the Open Door Law.

BACKGROUND

You requested on February 7 the minutes from the January meetings of the Township. The first January meeting was the reorganization meeting for the year, and occurred on January 2. The second was of the regular meeting held on January 16. You were told that the minutes were not on file yet. You were asked to complete a request form, and you would have the minutes as soon as they were available. You believed that at the time you requested the minutes, the month delay in the completion of the minutes of January 2 was unreasonable.

You checked back with the township office on the 8th and 9th of February, but the minutes were not available. When you returned to the office the following week, on the 15th, 16th and 19th, the office was not open. You faxed your complaint to the Office of the Public Access Counselor on February 20. Shortly after you sent your complaint you were able to retrieve the January 2 minutes but were told that the January 16 minutes would be available only after they were approved at a meeting that would not occur until March 21.

I sent a copy of your complaint to the Township. Township Trustee Jim Bolin responded, a copy of which is enclosed for your reference.

He stated that the minutes of the January 2 meeting were available as early as February 16 although the exact date is not clear. The delay in producing the minutes was due to the illness of the board secretary. He attempted to reach you by telephone but apparently had copied the number incorrectly. This was the reason that he was not able to reach you to let you know the records were ready. He told his fire chief on Monday, February 19 that you might be in to pick up the minutes. He explained that the January 16 minutes would not be made available until they were approved. You retrieved the January 2 minutes on February 20.

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. Ind. Code 5-14-3-3(a). For most records, a public agency is not required to produce a record that it does not have, but memoranda of meetings are required to be available within a reasonable time after the conclusion of the meeting, under the Open Door Law. IC 5-14-1.5-4(c). The Township should note that the memoranda are to be kept as the meeting progresses. At a minimum, the memoranda¹ of the January 2 meeting should have been available before February 7. The failure to make the memoranda available within a reasonable period of time after the meeting was in violation of the Open Door Law.

In addition, it was a violation of the Access to Public Records Act to deny the January 16 minutes until their approval at a subsequent meeting. A record may be denied only where it is exempt under section 4 of the Access to Public Records Act. IC 5-14-3-3(a). There is no exemption in section 4 for minutes that have yet to be approved, or so-called "draft" minutes. The Township should have disclosed the January 16 minutes or memoranda upon your request. I recommend that the Township prepare memoranda within a reasonable period of time after its meetings and make them available without awaiting Board approval. The Township is free to designate the minutes as "draft" or "subject to approval" to address concerns that the recipient of such draft minutes would consider the draft minutes as the official record of the body's proceedings.

¹ (b) As the meeting progresses, the following memoranda shall be kept:

- (1) The date, time, and place of the meeting.
- (2) The members of the governing body recorded as either present or absent.
- (3) The general substance of all matters proposed, discussed, or decided.
- (4) A record of all votes taken, by individual members if there is a roll call.
- (5) Any additional information required under IC 5-1.5-2-2.5 or IC 20-12-63-7.

(c) The memoranda are to be available within a reasonable period of time after the meeting for the purpose of informing the public of the governing body's proceedings. The minutes, if any, are to be open for public inspection and copying. IC 5-14-1.5-4.

CONCLUSION

For the foregoing reasons, I find that the Madison Township Trustee and Board violated the Open Door Law and the Access to Public Records Act.

Sincerely,

Karen Davis
Public Access Counselor

cc: Jim Bolin