

April 4, 2007

*Sent Via Facsimile*

Shirley Forbes  
12345 E. Stalbaum Lane  
Wheatfield, IN 46392

*Re: Formal Complaint 07-FC-60; Alleged Violation of the Access to Public Records Act by the Wheatfield Township Board and Wheatfield Township Trustee*

Dear Ms. Forbes:

This is in response to your formal complaint alleging that the Wheatfield Township Board (“Board”) and Wheatfield Township Trustee (“Trustee”) violated the Access to Public Records Act by failing to give you records of the township. I find that the Board did not violate the Access to Public Records Act but the Trustee has failed to respond to your request or make his records available within a reasonable time.

#### BACKGROUND

You requested records of the township on February 20, 2007. You sent your written request itemizing the public records you wished to inspect or copy to each of the members of the Board and to Mr. John Sumara, Trustee. You requested five categories of records. To summarize your request, you asked for copies of all contracts between Tracey Shorter and the township, copies of all checks payable to Tracey Shorter or GTS Grant Writing Service, minutes of notes pertaining to grants, copies of all communications, notes, etc. between the Trustee and any Board members with regard to Shorter or GTS Grant Writing Service, and copies of all grants written or in the process of being written, letters of confirmation, or denial of any grants processed by Shorter. You state that Mr. Kingma had contacted you but had not provided any records.

I sent a copy of your complaint to Mr. James Kingma of the Board and to Mr. John Sumara, Trustee. As of Monday, April 2 I had not received any response by the township. After

calling Mr. Sumara, he provided a response by mail, which I received on April 3. I enclose a copy of his response for your reference. Mr. Sumara enclosed a copy of the Shorter contract, copies of two checks written to Shorter, and copies of the minutes. There were nine pages of records in total. Mr. Sumara avers that to his knowledge there have been no other communications between the Board and himself, and the grant writer. In addition, he states that “no other grant applications have been made at this time.”

## ANALYSIS

[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).

The APRA does not set forth any timeframe for when records must be disclosed. This Office has said that records should be disclosed within a reasonable time.

The Board and the Trustee were required to issue a response to your request within the appropriate timeframe, depending upon how your request was received. You enclosed an exhibit showing a letter sent to you by Mr. Kingma, dated February 21. The letter indicates that the information you seek is not maintained by the board members but should be filed with the Trustee. This response was adequate and timely under the Access to Public Records Act. However, I see no information showing that the Trustee responded at all to your request. After receiving a letter and a telephone call from my office, Mr. Sumara sent a letter responding to your request and enclosing some of the records you requested. From a reading of his response letter, it appears that Mr. Sumara has no other responsive records. However, I note that the final notation in his belated response letter that “no other grant applications have been made at this time” does not clarify whether his office maintains any responsive records to your request #5. You requested not only completed grant applications but also any in the process of being written. Mr. Sumara should clarify that he has no responsive records, or should disclose any records that fall within your request #5.

I find that the Trustee has violated the Access to Public Records Act when he failed to respond in a timely manner to your written request for records. Furthermore, I find that the failure to disclose the records, a total of nine pages of documents, until six weeks after the date of your request, was unreasonable. The Trustee violated the Access to Public Records Act.

#### CONCLUSION

For the foregoing reasons, I find that the Wheatfield Township Board did not violate the Access to Public Records Act. However, the Wheatfield Township Trustee violated the Access to Public Records Act by not responding timely to your request for records and by not providing the records in a reasonable timeframe. I also recommend that Mr. Sumara clarify whether the township maintains the records you identify in your request #5.

Sincerely,

Karen Davis  
Public Access Counselor

cc: Mr. John Sumara  
James Kingma