

April 18, 2007

Richard M. Hancock
5400 E. 300 S
Whitestown, IN 46075

Re: Formal Complaint 07-FC-72; Alleged Violation of the Access to Public Records Act by the Worth Township Trustee

Dear Mr. Hancock:

This is in response to your formal complaint alleging that the Worth Township Trustee ("Trustee") violated the Access to Public Records Act when he failed to provide electronic access in a timely manner. I find that the Trustee was required to make reasonable efforts to provide a copy of electronically stored records, and to provide the copy within a reasonable time. I also find that the Trustee is not permitted to withhold copies of records because a person owes a copy fee for records provided previously.

BACKGROUND

You have asked for and received various township records in hard copy form. The complaint you filed with the Public Access Counselor concerns your right to receive, on a compact disc (CD), a copy of the financial records of the township that are stored in the township's computers. You allege that you requested the records on February 5, 2007. You resubmitted your request on February 10. In response, Mr. Robert Guest stated that he was willing to provide records only during the regularly scheduled time for accessing public records, limited to each Monday between the hours of 4 and 5 o'clock.

You supplied Mr. Guest with four blank CDs on which to copy the data. Mr. Guest informed you that he was willing to download the information but the information would be provided in DOS format and may not be accessible from your personal computer. The only information in electronic format is the township's ledgers for just two years. Mr. Guest took a day off on Monday, March 5 and intended to take another Monday off on March 19. As of the date you filed your complaint, March 14, you still had not received any of the electronic data.

Mr. Guest responded to your complaint; I have enclosed a copy of his response for your review. The financial data are stored in the computer in a program called Township Office Manager. The township employs no technology personnel to assist with computer issues. In a nutshell, Mr. Guest claims that the electronic records are not the official records of the township because their storage in a computer is subject to computer crashes and is therefore unreliable as a sole means to store records.

The delay in getting the CDs to you was due to several factors. First, Mr. Guest had to consult with a software support group who stated that if you burned a copy of the data only onto the CD, that a requester would have to purchase the software in order to access the data. Second, his position is not a full-time job and he has no administrative support. Also, he was on personal leave from February 26 or shortly thereafter until March 17. Mr. Guest stated he provided you the data on the CDs on March 26.

Mr. Guest acknowledged that he told you he would not provide copies of any records until you paid for copies he had given you previously. He did receive payment for those copies, and thereafter gave you the CDs.

You sent me an e-mail on April 9 regarding your receipt of the CDs. You claim that you were unable to open the file on the CD. A computer friend of yours discovered that the CD contained a shortcut to a software program located on the township's computer and is "absolutely worthless on any other machine."

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 ("APRA"). Ind. Code 5-14-3-3(a). Except as provided in subsection (e), a public agency that maintains or contracts for the maintenance of public records in an electronic data storage system shall make reasonable efforts to provide to a person making a request a copy of all disclosable data contained in the records on paper, disk, tape, drum, or any other method of electronic retrieval if the medium requested is compatible with the agency's data storage system. IC 5-14-3-3(d).

"Public record" is any material, regardless of form or characteristics that is "created, received, retained, maintained, or filed by or with a public agency." IC 5-14-3-2(m). Hence, the electronic data that the trustee maintains in the township computer is a public record even if the official record containing the town's finances is in hard copy form. The Trustee is required to make reasonable efforts to provide to a person making a request a copy of the data on disk.

The medium requested is the CD that was provided by you to the Trustee. Therefore, there does not seem to be any issue with respect to the compatibility of the medium you requested with the Trustee's data system. The Trustee apparently can transfer the data from the computer system to the CD. However, its usefulness to you may be limited by the fact that the software that would allow you to extract the data from the CD may not be commercially available or may not be software that is currently in your computer or that of your friend. It is not a violation of the Access to Public Records Act for a public agency to download data onto a media source at a person's request if the person has no means to view the data. Therefore, to the extent that the CDs provided by the Trustee cannot be viewed because your computer is not capable of opening the files, the Trustee has not violated the Access to Public Records Act.

Although not clear from your April 9 e-mail, you may be alleging that the information on the CD is just a shortcut to a software program, not data at all. I do not have enough information to determine if the Trustee did not provide a copy of the data on the CD and instead provided

something else. It is possible that the data in the computer cannot be copied in a way that will meet your purposes. The Trustee is required only to make reasonable efforts to provide a copy of electronically stored data, and is not responsible for ensuring that you can find a means by which to view it. That simply goes beyond the requirements of the Access to Public Records Act.

However, the Trustee should have provided a copy of the data in a more timely fashion than he did. You did not receive your CD for about six weeks after your renewed request. Mr. Guest stated he was on leave for personal matters away from the office for three weeks. During his absence, his statutory duties were attended to by someone, I would presume. That person should have also been available to provide copies of records. In addition, this office has said that a public agency should provide updates on its progress in fulfilling a public records request. There is no evidence that this was done. Your allegation that the Trustee makes records available to the public for just one hour per week, with an absence during that time resulting in no access for that week, was not contradicted by the Trustee. I find that the Trustee has not provided adequate justification for providing a copy of the record six weeks from the date of your renewed request.

In addition, part of the delay was unjustified because Mr. Guest told you that he would not provide copies of any records until you paid the copy fee that you owed for previous copies. I find no authority in the Access to Public Records Act for denying a copy of a record because the requester owes a debt to the public agency, even if the debt is for copying fees for records already provided to the person. A public agency may require that the payment for copying costs be made in advance. IC 5-14-3-8(e). Hence, the Trustee could withhold copies until you have paid a copying fee for those copies, but may not withhold a copy until a past due copying fee is paid.

CONCLUSION

For the foregoing reasons, I find that the Worth Township Trustee made reasonable efforts to provide a copy of the data but did not do so in a reasonable timeframe. The Trustee may not refuse to provide copies until a person has paid for previous copies, but may collect the copy fee in advance.

Sincerely,

Karen Davis
Public Access Counselor

cc: Robert Guest