

March 10, 2008

Kelly Ehinger
128 South 3rd Street
Decatur, Indiana 46733

Re: Formal Complaint 08-FC-53; Alleged Violation of the Access to Public Records Act by the St. Mary's Township Trustee of Adams County

Dear Ms. Ehinger:

This advisory opinion is in response to your formal complaint alleging the St. Mary's Township Trustee of Adams County ("Trustee") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by not responding to your request for records. It is my opinion the Trustee violated the APRA.

BACKGROUND

In your complaint you allege that you submitted a request to the Trustee dated February 5, 2008 for copies of several records related to the Decatur Public Library. You allege that the Trustee came to see you on February 6 and discussed the survey regarding the library, which is central to your complaint. The Trustee did not bring copies of the requested records at that time. You allege that you again requested copies of the records and the Trustee indicated he would copy them during the weekend of February 9 and 10. You allege the Trustee did not provide you with those records. You filed this complaint on February 12, alleging denial of access.

My office sent a copy of your complaint to the Trustee and provided the opportunity for the Trustee to respond, but we did not receive a response to the complaint.

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. 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 delivered by mail or facsimile 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).

Here the Trustee responded to your complaint by appearing to see you the day after you submitted your request and by later indicating he would provide the copies to you that weekend. While the APRA provides a timeline for response to a request, the APRA does not provide a timeline for production of the records. The public access counselor's office 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, if the records are readily available and are not so voluminous as to require an extensive amount of copying time, it was reasonable to expect the records to be produced when the Trustee indicated the records would be produced. If the Trustee still has not produced the records, it is my opinion the Trustee has violated the APRA.

CONCLUSION

For the foregoing reasons, it is my opinion the Trustee violated the APRA by denying you access to records.

Best regards,



Heather Willis Neal
Public Access Counselor

cc: Russell Cook, St. Mary's Township Trustee