

March 26, 2008

Dora Brown and Sonjia Graf
6429 North Kivett Road
Monrovia, Indiana 46157

Re: Formal Complaint 08-FC-75; Alleged Violation of the Access to Public Records Act by the Gregg Township Volunteer Fire Department

Dear Ms. Brown and Ms. Graf:

This advisory opinion is in response to your formal complaint alleging the Gregg Township Volunteer Fire Department ("Department") 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 Department's response to the complaint for your reference. It is my opinion the Department has violated the APRA by failing to respond to your request for access to records.

BACKGROUND

You allege that you submitted by letter dated January 25, 2008 a request to the Department for copies of a number of records maintained by the Department. You provide a copy of the delivery confirmation from the United States Postal Service, indicating the Department received the request on February 6. Receiving no response, you mailed this complaint on February 29, and I received it on March 4.

The Department responded to the complaint by letter dated March 6 from Fire Chief David Reese. Mr. Reese contends that since he did not respond to your request, he could not have denied access. He contends that the last time you requested records and he indicated he was compiling the responsive records, you filed a complaint with this office. As such, he "did not bother" responding to you this time. Mr. Reese indicates he cannot provide you copies of the "run sheets" but will provide you a copy of the "run log." He further contends the Department has already provided you with some of the information for 2006 which you have requested. Finally, Mr. Reese indicates he will provide the records to you as soon as possible.

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

Department 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 Department 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).

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). Previous public access counselors have 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.

This office has often suggested a public agency make portions of a response available from time to time when a large number of documents is being reviewed for disclosure. See *Opinion of the Public Access Counselor 06-FC-184* and *Office of the Public Access Counselor Informal Inquiry Response May 10, 2006*. The burden lies with the public agency to show the time period for producing documents is reasonable. *Opinion of the Public Access Counselor 02-FC-45*.

Here, the Chief acknowledges he did not respond to your request within seven days of receipt. As such, the Department has violated the APRA. See I.C. § 5-14-3-9(b). Regardless of whether the indication that the Chief did not bother with a response because the last time he did you filed a complaint was meant to be flippant or merely factual, it is not an acceptable reason for failing to respond to a request, thereby denying access to records.

The Chief has indicated, though, that he is working to compile the requested records. While section 7 of the APRA requires the Department to regulate any material interference with the regular discharge of duties, it does not allow the agency to utilize the provision to deny access to records. I.C. § 5-14-3-7. Therefore, it is my opinion the Chief should continue to compile the requested records and provide those records responsive to the request and not rendered nondisclosable by section 4 of the APRA to you as soon as is possible.

Regarding the Chief's contention that the Department has previously provided the 2006 records to you, it is my opinion the Department is not required to again provide you copies of those same records. The APRA provides that if a person is entitled to a copy of the record under the APRA and the agency has reasonable access to a copy machine, the agency must provide at least one copy of the record to the person. I.C. § 5-14-3-8(e). It is my opinion that this provision allows an agency to refuse to provide additional copies of the same record already provided to a requester. As such, it is my opinion the Department may deny your request for copies of any

records previously provided to you, so long as those records have not changed since the time you received copies of them.

Finally, regarding the Chief's indication that he cannot provide you with the "run sheets" but can provide you with the "run log," the agency bears the burden of proof to sustain the denial of access. I.C. § 5-14-3-9(f). Further, if the Department maintains but denies access to any requested records, like the "run sheets," the Department must indicate the statutory authority excepting the records from disclosure. I.C. § 5-14-3-9(c)(2).

CONCLUSION

For the foregoing reasons, it is my opinion the Department violated the APRA by not responding to your request.

Best regards,



Heather Willis Neal
Public Access Counselor

cc: David J. Reese, Fire Chief, Gregg Township Volunteer Fire Department