



STATE OF INDIANA

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June 1, 2010

Ms. Dawn N. Pelc
12701 Rosewood Ct.
St. John, IN 46373

Re: Formal Complaint 10-FC-104; Alleged Violation of the Access to Public Records Act by the St. John Township Trustee

Dear Ms. Pelc:

This advisory opinion is in response to your formal complaint alleging the St. John Township Trustee ("Trustee") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* A copy of the Trustee's response is enclosed for your reference.

BACKGROUND

According to your complaint, you requested documents from the Trustee on April 6, 2010. You claim the Trustee did not respond to your request until you contacted this office for assistance. After that, the Trustee granted your request, but required you to pay for copies of the records in advance. The Trustee informed you that you would receive the records 24 hours after paying the fee. After you remitted \$78.90 for copies, however, you received an email from the Trustee informed you that it would take three business days to provide you with the copies. Later that day, the Trustee sent another email stating that she would inform you when the records were ready. You suspect the Trustee was delaying the release of the records until after the election because you are a candidate running for St. John Township Trustee.

My office forwarded a copy of your complaints to the Trustee. In response, the Trustee states that her office responded to your request the same day it received it. She further claims that the list of records you requested was extensive and covered a span of five years. As a result, the Trustee's staff had to procure many of them from a storage facility in the basement of the township. The Trustee claims that her office "made every effort to expedite copying the 486 pages covering a 5 year span in a timely manner." She further notes that after her office notified you on April 26th via telephone and email that your records were ready, you did not pick them up until April 27th.

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 does not dispute that it is a public agency for the purposes of the APRA. I.C. § 5-14-3-2(m). Accordingly, any person has the right to inspect and copy Trustee’s public records 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).

There are no prescribed timeframes when the records must be produced by a public agency. The public access counselor has stated repeatedly that records must be produced within a reasonable period of time, based on the facts and circumstances. Considering factors such as 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 is necessary to determine whether the agency has produced records within a reasonable timeframe. Section 7 of the APRA requires a public agency 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). The ultimate 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, you submitted your request on April 6th. The Trustee produced the records you requested on April 26th, and you picked them up on April 27th. It appears that your records request itself was five pages in length and requested voluminous records from a number of different sources. The Trustee assures me that her office made every effort to produce the records you requested in a timely manner. Under such circumstances, it is my opinion that the Trustee produced the records within a reasonable amount of time.

CONCLUSION

For the foregoing reasons, it is my opinion that the Trustee did not violate the APRA.

Best regards,



Andrew J. Kossack
Public Access Counselor

cc: Jean E. Shepherd