



# STATE OF INDIANA

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August 9, 2010

Ms. Johanna J. Campbell  
3053 East 1050 North  
Ossian, IN 46777

*Re: Formal Complaint 10-FC-160; Alleged Violation of the Access to Public Records Act by the Jefferson Township Trustee*

Dear Ms. Campbell:

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

## BACKGROUND

In your complaint, you allege that you submitted a written request for records to the Trustee on June 16, 2010. Your request sought "copies of all township receipts and expenditures, financial and appropriation records, budgets and financial disclosure reports" from January 1, 2005, to the present. You later spoke with the Trustee via telephone to "confirm that none of the records . . . would be available to review or copy until after July 30, 2010." You allege that the Trustee informed you that you could not schedule an appointment to inspect or copy the records until after July 30th, and that you would need to contact him after that date to do so. As a result, you believe the Trustee has failed to produce the records within a reasonable amount of time.

In response to your complaint, Jefferson Township Trustee Richard McCoy denies that he informed you that the records would not be available until after July 30th; he claims that he told you that he would not be available to meet with you due to working on the budget. He further states that he told you that you could call at any time to "agree on a date to view or copy any information" you wanted, with the exception of poor relief files (which you do not dispute are confidential).

## ANALYSIS

The public policy of the APRA states that “(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 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 Trustee’s public records during regular business hours unless the records are excepted from disclosure as confidential or 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 (7) days of receipt, the request is deemed denied. I.C. §5-14-3-9(b). If the request is delivered in person and the agency does not respond within 24 hours, the request is deemed denied. I.C. §5-14-3-9(a). The APRA does not require public agencies to *produce* records within seven (7) days; rather, it requires a *response*. A response from the public agency could be an acknowledgement that the request has been received and information regarding how or when the agency intends to comply.

The APRA does not prescribe deadlines regarding the production of public records. However, 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.

The ultimate burden lies with the public agency to show the time period for producing documents is reasonable. *See Opinion of the Public Access Counselor 02-FC-45*. Here, the Trustee sent you a letter on June 24th in response to your June 16th request. In that letter, the Trustee stated that he would be “glad to comply with your request for access to financial records after July 30, 2010.” The Trustee informed you that his office was currently working on the budget for 2011 with the Department of Local Government Finance, and that its work would continue through June and most of July. I also note that you requested all of the Trustee’s financial records for the previous five years, which is a broad request covering a voluminous number of records.

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). The Trustee maintains that his work on the budget precluded him from producing the records you requested prior to July 30th. Moreover, I anticipate that some of the financial records might need to be reviewed so that any confidential financial information contained therein can be redacted prior to disclosure. *See* I.C. §5-14-3-4(a)(5). Under these circumstances, it is my opinion that the Trustee has sustained its burden of proof to demonstrate why it failed to release the records to you prior to July 30th. However, I also note that 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). Consequently, if the Trustee delays the availability of your records beyond August 27th, such a delay would, in my opinion, be unreasonable under the APRA.

To the extent that an agency fails to grant access to public records following the issuance of an advisory opinion from this office, a complainant's remedies lie with a court pursuant to Ind. Code § 5-14-3-9(e).

#### CONCLUSION

For the foregoing reasons, it is my opinion that if the Trustee makes the requested records available to you for inspection and copying on or before August 27, 2010, the Trustee will have produced the records within a reasonable amount of time.

Best regards,

A handwritten signature in black ink that reads "Andrew J. Kossack". The signature is written in a cursive, slightly slanted style.

Andrew J. Kossack  
Public Access Counselor

CC: Richard McCoy