



# STATE OF INDIANA

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September 10, 2010

Beverly Himes  
8040 S. Rockport Road  
Bloomington, IN 47403

*Re: Formal Complaint 10-FC-179; Alleged Violation of the Access to Public Records Act by Indian Creek Township*

Dear Ms. Himes:

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

## BACKGROUND

In your complaint, you allege that you mailed and faxed a request to Indian Creek Township Trustee Linda Hollingsworth, along with a check for \$10.00 dollars, on July 27, 2010. You claim that you did receive a response from Ms. Hollingsworth on August 3, 2010. In that response, Ms. Hollingsworth acknowledged receipt of your request. Subsequently, you received a second response from Ms. Hollingsworth informing you that your check was torn and "that you were not entitled to any information concerning the grant (the Township) receives." You allege that this is a violation of the APRA.

My office forwarded a copy of your complaint to the Township for a response. Ms. Hollingsworth responded on behalf of the Township. Her letter is enclosed for your review. In it, she states that she was advised by a FEMA Grant Manager that the Township was "under no obligation to release any information regarding the FEMA Grant awarded to Indian Creek Township and that any information pertaining to the Grant was password protected."

## 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 Township does not dispute that it 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 Township's public records during regular business hours unless the records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. I.C. § 5-14-3-3(a).

A public agency may not disclose certain confidential records unless access to the records is specifically required by a state or federal statute or is ordered by a court under the rules of discovery. I.C. § 5-14-3-4(a). One category of confidential records is records that federal law classifies as confidential. I.C. § 5-14-3-4(a)(3). The APRA places the burden of proof for the nondisclosure of a public record on the public agency that would deny access to the record and not on the person seeking to inspect and copy the record. I.C. § 5-14-3-1. In a court action challenging the denial of a record, the court determines the matter *de novo*, with the burden of proof on the public agency to sustain its denial.

In reviewing the denial letter from Ms. Hollingsworth, I note that the Township failed to cite to the statutory provision authorizing the nondisclosure of the requested records. Indiana Code 5-14-3-9(c)(2)(A) requires that a written response denying a record request must cite to the specific statutory basis for withholding the record. The Township's failure to provide the authority for the nondisclosure in its August 6, 2010, letter violates that provision of the APRA. I am not aware of a specific federal law that would require the record at issue here to be kept confidential. However, if such a law exists to classify the record as confidential, the Township has not violated the APRA by refusing to disclose it.

#### CONCLUSION

For the foregoing reasons, it is my opinion that the Township has violated section 9 of the APRA by failing to cite to specific statutory authority in its denial of access. The Township should either produce the records at issue or provide you with an adequate denial under the statute.

Best regards,



Andrew J. Kossack  
Public Access Counselor

Cc: Linda Hollingsworth