



STATE OF INDIANA

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November 23, 2010

Ms. Sonja Graf
6364 N. Kivett Road
Monrovia, IN 46157

Re: Formal Complaint 10-FC-261; Alleged Violation of the Access to Public Records Act by Gregg Township Board and Trustee

Dear Ms. Graf:

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

BACKGROUND

In your complaint, you allege that you requested "a copy of a detailed proposed 2011 budget at the meeting which was held October 12 and 19, 2010." You state that you requested the records at the end of the October 19th meeting. Specifically, you claim that "[a]s I requested for [sic] the documents at the end of Oct. 19, 2010 [sic] meeting, Carole Snyder said this meeting is over. Kenny Vaugh acting chairperson [sic] said he made a motion and second [sic] it, this meeting is over." You then waited five days for the Board to respond to your request, but you received no response.

Attorney Stephen Buschmann responded to your complaint for the Township. He states that the Trustee and Board believed that you were requesting a copy of the budget that was published in the newspaper and which you already had at the time of your request. He adds that upon receipt of your complaint in this matter, the Township understood that you were actually requesting the budget forms that were approved by the Board at the October 19th meeting. The Township immediately obtained a copy of the budget forms and forwarded them to you by mail on October 26th. Mr. Buschmann claims that the Township simply misunderstood your request at the meeting and provided you with the requested records once the officials understood what records you were seeking.

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 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 nondisclosable under the APRA. I.C. § 5-14-3-3(a).

Here, Mr. Buschmann claims that a simple misunderstanding resulted in the Township’s failure to produce records in response to Ms. Graf’s October 19th request. However, it is not clear whether or not the Board ever actually responded to the request, or whether it was simply ignored. If a 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). Thus, the Board should have responded to Ms. Graf’s request, even if it was to simply acknowledge it and communicate the Board’s understanding at that time that she already had access to the budget records. Mr. Buschmann is correct that under the APRA, a “request for inspection or copying must: (1) identify with reasonable particularity the record being requested....” I.C. § 5-14-3-3(a). However, if the Board did not understand Ms. Graf’s request, it was incumbent upon the Board to ask for clarification.

On the other hand, Ms. Graf apparently did not follow up with the Board after the October 19th meeting to inquire about the status of her request or to clarify what records she was seeking. Instead, she filed this complaint. While the APRA does not require that complainants follow up with public agencies prior to filing formal complaints, I always encourage them to do so in order to avoid situations like this involving miscommunications. The parties’ obvious adversarial relationship has produced numerous complaints to this office in recent years. I remind them that this is not the appropriate forum for airing personal or political grievances.

CONCLUSION

For the foregoing reasons, it is my opinion that the Township should have requested clarification from Ms. Graf if there was a question about whether her request was made with reasonable particularity. The Township did not otherwise violate the APRA.

Best regards,



Andrew J. Kossack
Public Access Counselor

cc: Stephen R. Buschmann, Esq.