



STATE OF INDIANA

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March 24, 2010

Mr. John Boissy
603 S. Hallock St.
DeMotte, IN 46310

*Re: Formal Complaint 10-FC-47; Alleged Violation of the Access to
Public Records Act by Keener Township*

Dear Mr. Boissy:

This advisory opinion is in response to your formal complaint alleging Keener Township (the "Township") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.*, and the Open Door Law, Ind. Code § 5-14-1.5-1 *et seq.* I have enclosed the response from Ms. Diana Haberlin, the Keener Township Trustee (the "Trustee").

BACKGROUND

According to your complaint, you serve as board chairman for Keener Township in Jasper County. The Keener Township Board (the "Board") held a meeting on January 23, 2010, for the Township's annual report. The Township has no travel policy, so you raised a question regarding funds that were reimbursed to a Township employee. The Trustee informed the Board that she had purchased a new ambulance. You argue that the governing body, as the purchasing agent for the Township under I.C. § 5-22-2-25, never made the Trustee the purchasing agent under I.C. § 5-22-2-26. The Trustee purchased the ambulance according to I.C. § 5-22-8-3.

You state that the Board appropriated one hundred thousand dollars (\$100,000.00) for the purchase of an ambulance in 2009. At a meeting on August 31, 2009, the Trustee discussed that purchase. You asked to review "specs and other options on this purchase" and the Board discussed it another meeting on October 19, 2009. You allege, however, that the public was never informed of the purchase.

In response to your complaint, the Trustee acknowledges that the Township purchased a re-mounted (refurbished) ambulance. The Trustee claims, however, that funds for the re-mounted ambulance were discussed at public meetings on September 17, 2008; October 13, 2008 (\$100,000 appropriation for new ambulance); October 27, 2009

(adopted budget with \$100,000 appropriated for ambulance); August 31, 2009 (“Trustee talked about remounting ambulance and explained the process. Announced the quotes we received. Discussed IC 5-22-8-3, small purchase code for purchases between \$50,000 and \$150,000. Mr. Boissy wanted me to check on another option, which was done.”); October 19, 2009 (announcement at a public meeting that money was appropriated for remounting ambulance). The Trustee claims that she “followed IC 5-22-8-3 the small purchase law, met all the requirements, and awarded the contract to the lowest responsible offer and ordered the remounted ambulance for \$78,712.00.”

The Trustee also denies that she ever denied you access to any public record on or about January 23, 2010. She claims that “[s]everal records were pulled . . . during the public meeting for the annual report and at no time did Mr. Boissy or anyone else ask to look at anything having to do with the ambulance purchase.”

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 Township is a “public agency” under the APRA. IC 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 public records are excepted from disclosure as nondisclosable under the APRA. I.C. § 5-14-3-3(a).

Here, the Trustee maintains that she did not deny you access to any records. The public access counselor is not a finder of fact, so I cannot make a determination as to whether or not you were, in fact, denied access to records. Under the APRA, the burden of proof for nondisclosure lies with the public agency that would deny access to the record and not to the person seeking to inspect and copy the record. I.C. § 5-14-3-1. If the Trustee denied you access to any records, the Trustee must have had a basis for doing so under section 4 of the APRA.

You also seem to allege that the Board held meetings on August 31, 2009, and October 19, 2009, that were not open to the public (because you state that the public was not informed of the ambulance purchase although it was discussed by the Board at those meetings). To the extent that the Board held a meeting that was neither open to the public nor advertised as an executive session, it violated the ODL. The Trustee, however, seems to argue that these meetings were, in fact, open to the public. Again, because the public access counselor is not a finder of fact, I express no opinion regarding who is correct in their characterization of those meetings. Suffice it to say that if the Board held a meeting that was not open to the public and was not a properly noticed executive session, the Board violated the ODL.

In your complaint, you also allege that the Trustee did not have the authority to purchase the ambulance under I.C. § 5-22-2. However, this is an issue that is outside of

the scope of my advisory authority because it is outside of the scope of the public access laws. I.C. § 5-14-4-10.

CONCLUSION

For the foregoing reasons, it is my opinion that if the Board held non-public meetings that were not advertised as executive sessions, the Board violated the ODL. Moreover, if the Trustee denied you access to public records without a basis under section 4 of the APRA, the Trustee violated the APRA.

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: Diana Haberlin, Keener Township Trustee