



# STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

PUBLIC ACCESS COUNSELOR  
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December 7, 2011

Jo Lynn Hussey  
Trustee – Duck Creek Township  
17273 N. State Road 37  
Elwood, Indiana 46036

*Re: Formal Complaint 11-FC-287; Alleged Violation of the Access to Public Records Act by the Pipe Creek Township*

Dear Ms. Hussey:

This advisory opinion is in response to your formal complaint alleging the Pipe Creek Township (“Township”) violated the Access to Public Records Act (“APRA”), Ind. Code § 5-14-3-1 *et seq.* Patrick Hoose, Trustee, responded to your formal complaint. His response is enclosed for your reference.

## BACKGROUND

In your formal complaint, you allege that on September 8, 2011, while meeting with Mr. Hoose and Tom Beeman, you requested copies of the financial records of the Pipe Creek-Duck Creek Fire Territory. Your request included records showing receipts and expenditures apportioned between Pipe Creek Township and Duck Creek Township. Mr. Hoose indicated that the records were kept electronically and he would forward them to the Township attorney for review. After the attorney had a chance to review the records, they would be forwarded to your attorney, Stephen Buschmann. On September 21, 2011 and October 3, 2011, Mr. Buschmann contacted Mr. Beeman regarding the status of your request. Mr. Beeman acknowledged the receipt of Mr. Buschmann’s inquiries, but as of November 14, 2011, the date you filed your formal complaint with the Public Access Counselor’s Office, you have yet to receive any records in response to your request.

In response to your formal complaint, Mr. Hoose advised that he meet with you and your legal counsel on September 8, 2011. At the meeting, you proposed a fire fighting contract for your physical and financial portion of the Pipe Creek Township-Duck Creek Township Fire Territory. After the meeting, Mr. Hoose contacted the State Board of Accounts, Department of Local Government Finance, Madison County Auditor’s Office, and numerous other legal resources to insure that the proposed contract

you proposed was legally possible. Since September 8, 2011, you have visited the Pipe Creek Township offices on two separate occasions and at no time requested or indicated in any manner that you would like to seek or have copies of any public records.

After receiving your formal complaint from the Public Access Counselor's Office on December 2, 2011, Mr. Hoose immediately compiled the financial records that you allegedly sought and attempted to contact you on three occasions to deliver the records. On December 6, 2011, Donnetta Williams, Duck Creek Township Advisory Board President, contacted you via phone and informed you that the records were available at the Township Office's during normal business hours.

### 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." See I.C. § 5-14-3-1. The Township is a public agency for the purposes of the APRA. See 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. See I.C. § 5-14-3-3(a).

The public access counselor is not a finder of fact. Advisory opinions are issued based upon the facts presented. If the facts are in dispute, the public access counselor opines based on both potential outcomes. See *Opinion of the Public Access Counselor 11-FC-80*. Here you allege that you made an oral request for records of the Township during a September 8, 2011 meeting with Mr. Hoose. Mr. Hoose has provided that he did not interpret conversations held during the meeting as a request by your for records pursuant to the APRA, but a request for a fire fighting contract for your physical and financial portion of the Pipe Creek Township-Duck Creek Township Fire Territory. You have provided e-mail correspondence between the respective attorneys that seem to acknowledge a pending records request. Mr. Hoose has stated that on two separate occasions after you allegedly made a records request, you visited Township Offices and made no mention of the pending request or indicated in any manner that you would like copies of any public records. Mr. Hoose has advised that all documents that are responsive to your request are now available at the Township offices and were made available within one day of receiving your formal complaint from the Public Access Counselor's Office. As such, it is my opinion that if you made an oral public records request on September 8, 2011 and the Township did not provide documents responsive to the request until on or about December 3, 2011, the Township acted contrary to the APRA. However, if the Township received no such request on September 8, 2011, it has not violated the APRA. As the Township has now provided all documents that are responsive to your request, I trust that this is in satisfaction of your complaint.

## CONCLUSION

For the foregoing reasons, it is my opinion that if the Township received your oral records request on September 8, 2011 and failed to provide documents responsive to it until December 3, 2011, it acted contrary to the APRA by failing to provide the records requested within a reasonable period of time. However, if the Township received no such request at the September 8, 2011 meeting, the Township has not violated the APRA.

Best regards,

A handwritten signature in black ink, appearing to read "J. Hoage". The signature is written in a cursive style with a large initial "J" and a distinct "Hoage" following.

Joseph B. Hoage  
Public Access Counselor

cc: Patrick Hoose