

June 18, 2003

Robert A. Grayless
9633 Trading Post Road
Leo, IN 46765

Re: *Advisory Opinion 03-FC-38*: Alleged Denial of Access to Public Records by the Cedar Creek Township Trustee's Office.

Dear Mr. Grayless:

This is written in response to your formal complaint, which was received on May 20, 2003. You have alleged that the Cedar Creek Township Trustee's Office ("Trustee's Office") violated the Indiana Access to Public Records Act, ("APRA,") Indiana Code chapter 5-14-3. Specifically, you claim that you made a public records request to the Trustee's Office, which was mailed on April 25th, but that you did not receive a response to your request. Mr. Jack V. Bridges, Township Trustee, did provide a written response to your formal complaint and a copy of it is enclosed for your reference. For the reasons set forth below, it is my opinion that the Trustee's Office failed to respond to your written request within seven (7) days after it was received and that this was a denial that is actionable under the APRA.

BACKGROUND

According to your complaint, you mailed a public records request to the Trustee's Office on April 28, 2003. You know that your request was received because Mr. Bridges distributed copies of your request at the April 29th meeting of the Township Advisory Board. While Mr. Bridges apparently commented on the request, he never provided any direct response to you, either verbally or in writing. You then filed your formal complaint with this Office.

In response to your complaint, Mr. Bridges did provide me with a copy of his June 16, 2003 letter to you responding to the public records request. Mr. Bridges did not indicate in his letter whether he had responded to you within the time frame provided under the APRA. I did have a telephone conversation with Mr. Bridges on June 10th and at that time, Mr. Bridges advised me that he did receive your request and that he had it entered into the minutes of the Township Advisory Board meeting on April 29, 2003. Mr. Bridges also stated that he provided you with a handwritten response on April 30th and that his response would provide more detail on this. There is nothing in his written response, however, that addresses this handwritten response.

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." Ind. Code § 5-14-3-1. Furthermore, "[t]his chapter shall be liberally construed to implement this policy and place 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." Ind. Code § 5-14-3-1.

The Trustee's Office is clearly a public agency for the purposes of the APRA. Ind. Code § 5-14-3-2. Accordingly, any person has the right to inspect and copy the public records of the Trustee's Office during regular business hours unless the public records are excepted from disclosure as confidential or otherwise nondisclosable under Indiana Code section 5-14-3-4. Ind. Code § 5-14-3-3(a).

It is the responsibility of the public agency to respond to requests for access to public records within a specified time period. The APRA does not set any time periods for producing public records, merely for responding to the request. For requests that are delivered by mail, a denial is deemed to have occurred if seven (7) days elapse after the agency receives the request and there has been no response. Ind. Code §5-14-3-9(b). Once a denial has occurred under the APRA, a person may file suit in the circuit or superior court in the county in which the denial took place to compel the public agency to disclose the public records requested. Ind. Code § 5-14-3-9(d).

According to your complaint, you mailed your request to the Trustee's Office and you did not receive a response to your request within seven (7) days after the Trustee's Office received it. Mr. Bridges stated in his telephone conversation with me that he did provide a handwritten response to you on April 30th, which would have met the time period for response under the APRA. You, however, did not indicate that you received a handwritten response and other than mentioning it to me over the telephone, Mr. Bridges has not provided any detail about this alleged timely response. It is my opinion that, absent more information about the alleged handwritten response of April 30th, it appears that the Trustee's Office did fail to respond to you in a timely manner under the APRA. This failure to respond constituted a denial that is actionable under Indiana Code section 5-14-3-9(d). While this does not alter my opinion, Mr. Bridges has now provided a detailed response and produced some of the public records you requested from his Office.

CONCLUSION

It is my opinion that, based upon the information provided to me, the Trustee's Office failed to respond to your written request for access to public records within seven (7) days after it was received and that this was a denial that is actionable under Indiana Code section 5-14-3-9(d).

Sincerely,

Anne Mullin O'Connor

Enclosures

cc: The Honorable Jack V. Bridges, CCTT