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**OPINION OF THE PUBLIC ACCESS COUNSELOR**

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JAMES C. LEWIS<sup>1</sup>  
*Complainant,*

v.

WABASH TOWNSHIP TRUSTEE,  
*Respondent.*

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Formal Complaint No.  
21-FC-135

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Luke H. Britt  
Public Access Counselor

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BRITT, opinion of the counselor:

This advisory opinion is in response to a formal complaint alleging the Wabash Township Trustee violated the Access to Public Records Act.<sup>2</sup> Attorney Raymond Biederman filed an answer on behalf of the department. In accordance with Indiana Code § 5-14-5-10, I issue the following opinion to

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<sup>1</sup> Thomas E. Moore filed a complaint over the same issue. Moore's complaint is hereby consolidated into this opinion.

<sup>2</sup> Ind. Code § 5-14-3-1 to -10.

the formal complaint received by the Office of the Public Access Counselor on September 3, 2021.

### **BACKGROUND**

In this case we consider whether the Wabash Township Trustee fulfilled the requirements of the Access to Public Records Act (APRA) in regard to a production of public records.

On August 17, 2021, James Lewis (Complainant), who serves as a Deputy Chief of the Wabash Township Fire Department Association, filed a public records request with the Wabash Township Trustee Jennifer Tiesing seeking the following:

The itemized expenses for June and July 2021.  
Please include what has been posted to Tom's web, DLGF and Gateway.

On September 3, 2021, Lewis filed a formal complaint with this office alleging the Trustee denied his request by failing to respond.

On September 23, 2021, the Township filed a response to Lewis's complaint arguing that Trustee Teising did not understand Lewis's email to be a formal (or informal) request for records under APRA.

The Township asserts that the request is too vague and ambiguous to meet APRA's "reasonable particularity" requirement because it fails to identify any records created or maintained by the Trustee or the Township. Additionally, the Township asserts that Lewis requested an itemized list of

expenses, which the Trustee is not required to maintain under Indiana law; and thus, is not required to create in order to fulfill a records request under the APRA.

The Trustee maintains a website with a detailed account of expenditures, balance sheets, reconciliation statements, and the like, however, the website has not been updated since June.

Alternatively, the second complainant Thomas Moore, sought projections for the 2022 budget as well as the projections for the remainder of the 2021 budget.

## **ANALYSIS**

### **1. The Access to Public Records Act**

The Access to Public Records Act (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. The Wabash Township Trustee’s Office is a public agency for purposes of APRA; and therefore, subject to its requirements. *See* Ind. Code § 5-14-3-2(q). As a result, unless an exception applies, any person has the right to inspect and copy the Trustee’s public records during regular business hours. Ind. Code § 5-14-3-3(a).

### **2. Trustee’s Duties**

A township trustee is statutorily obligated to keep township records open for inspection under Indiana law. *See* Ind. Code § 36-6-4-3(3). Notably, subsections (5) and (6) of that statute also require a trustee to receive and pay out township

funds; and to examine and settle all accounts and demands chargeable against the township.

Therefore, there can be no question that the financial, business, and operational records of the township's administrative duties should be open to anyone who cares to inspect them.<sup>3</sup>

The Trustee initially argues that she did not consider the email from Lewis to be a legitimate public records request. However, unless the Trustee has curated a written form specifically for APRA requests, she should consider any request for documentation or records to be akin to an APRA request and should proceed according to that statute. Notably, a written form can be utilized for tracking and organizational purposes. *See* Ind. Code § 5-14-3-3(a)(2).

To the Trustee's credit, it appears the first half of 2021's transactions are posted on the web and accessible to anyone. To the extent that the Trustee refers a constituent to that site pursuant to a request is an adequate response.

Nevertheless, the Trustee relies on APRA's reasonable particularity provision in answering Lewis's complaint. While the term "reasonable particularity" is not defined in Indiana Code, it is analyzed on a case-by-case basis.

Here, while a list of expenditures is posted on the Trustee's website, the receipts and itemized spending are not. Nor, to the Trustee's point, does it have to be. Therefore, to the extent that the requester is asking for these granular details,

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<sup>3</sup> Implicit in the opportunity to inspect is the opportunity to receive a copy as well although a fee may apply.

the online information can be a jumping off point to request a particular transaction.

Even so, a public official cannot simply dismiss a request simply because they don't "understand" what the requester is seeking. Whether the request is specific enough or not, a written response to a request is affirmatively required or the request is deemed denied. Here, a denial would not have been appropriate. Instead, an invitation to narrow the scope of the request would have been the better approach.

Implicit in the duty to keep the township records open to public inspection is a reasonable effort to update those records. Simply put, if the records aren't made available, there is no way for the public to inspect.

Here, the relevant records have not been updated since June. As of the writing of this opinion in November, the public lacks any meaningful ability to review the Township's transactions and business position. This would naturally prevent a request for details of those transactions from being specific. Given the relatively small number of transactions by a small government unit like a township, the availability of records should not be difficult.

As for the second request by Thomas Moore, many of the same principles apply, except it should be noted that questions posed to a public official are not covered by APRA. Moreover, while forecasts and budget projections are public record, they become so only after they are created and actually exist. Generally, a document does not have to be created to satisfy a public records request.

## **CONCLUSION**

Based on the foregoing, it is the opinion of this office that the Wabash Township Trustee should re-familiarize herself with the requirements and underlying policy considerations of the Access to Public Records Act.

A handwritten signature in black ink, appearing to read 'LH Britt', is positioned above the printed name.

**Luke H. Britt**  
Public Access Counselor