

December 1, 2005

Sent Via Facsimile

Jon Seidel
Post-Tribune
1433 E. 83rd Avenue
Merrillville, IN 46410

Re: Informal Inquiry Response; Alleged Violation of the Access to Public Records Act by the Portage Township Trustee

Dear Mr. Seidel:

You have requested an informal opinion from the Office of the Public Access Counselor. Pursuant to Ind.Code 5-14-4-10(5), I am issuing this letter in response to your request.

You received a denial of your request for records contained in Portage Township Trustee's office regarding poor relief. You requested applications for township assistance approved between September 1, 2004 and August 31, 2005, and applications for additional or continuing township assistance approved between September 1, 2004 and August 31, 2005. The denial letter, issued on September 20, 2005 by Jack Jent, Portage Township Trustee, stated that the Trustee was denying you access to information in township poor relief records as they are not public information. Mr. Jent cited IC 12-20-7-1 through -6, and IC 5-14-3-4.

Any person may inspect and copy the public records of any public agency, except as provided in section 4 of the Access to Public Records Act ("APRA"). Ind. Code 5-14-3-3(a). If a public agency receives a written request for records, the public agency may deny the request if the denial is in writing, and if the denial cites the specific exemption or exemptions authorizing the agency to withhold the records and the name and title or position of the person responsible for the denial. IC 5-14-3-9(c).

The denial that you received from the Portage Township Trustee did not meet the strict requirements of the APRA for denials, because it did not adequately cite the exemptions that are pertinent to records from poor relief files. First, the Trustee should have cited the specific APRA

exemption that applies to the records. Instead, he cited just to section 4 of the APRA, which contains 34 separate exemptions. Second, the Trustee should have cited the exact sections in IC 12-20-7 that apply to the disclosure of poor relief records. The chapter of the statute that he cited deals with many other subjects, not just to disclosure of poor relief records.

The correct citations are IC 5-14-3-4(a)(1), exempting records declared confidential by state statute, and IC 12-20-7-5 and -6, the state statute that applies to disclosure of certain information from poor relief records.

Information that is received through the use of a consent form described in section 1 of IC 12-20-7 that is not a public record under any statute may be used only in connection with the administration of the trustee's assistance program or the public assistance program. IC 12-20-7-5. A township trustee or assistant of a township trustee who knowingly discloses or uses information that is obtained through the use of a consent form commits a Class A misdemeanor. IC 12-20-7-6. Although these provisions do not explicitly state that information received through the use of a poor relief consent form is confidential, I have construed this provision as meeting the APRA's exemption for records declared confidential by state statute. In my view, the criminal penalties for disclosure operate to make this information confidential just as surely as if the legislature had used the word "confidential."

If a public agency receives a request for a record that contains partially disclosable and partially nondisclosable information, the public agency is required to separate the nondisclosable information and disclose the rest. IC 5-14-3-6(a). Hence, some of the information on applications for assistance may indeed be confidential. However, some information may be disclosable. For example, I have opined that information appearing on the notification sent to an applicant for poor relief, advising of the person's eligibility for benefits would be disclosable *except* for any information that was received by the Trustee through the use of a consent form. Hence, the bare denial of benefits should be disclosed, since the denial itself was not obtained through the use of the consent form, but the amount of an applicant's income, unless otherwise public information, should be redacted under the authority of IC 12-20-7-5 and -6.

Hence, as I read the Township Trustee's denial, he has denied access to *all* information in the township poor relief records. That denial appears too broad and does not have support in IC 12-20-7, but perhaps in the context of your specific request should not be read that broadly. If the denial extends to information on the application forms that was *not* obtained through use of the consent form, then the denial is a violation of the Access to Public Records Act.

I hope this guidance is helpful. Please feel free to contact me if you have other questions.

Sincerely,

Karen Davis
Public Access Counselor