

March 8, 2005 Denial of Records Regarding Members of the Otterbein Volunteer Fire Department

March 8, 2005

Ms. Jules Ewart  
P.O. Box 96  
29 E. Walsh Street  
Otterbein, IN 47970

*Re: Informal Inquiry Response; Alleged Violation of the Access to Public Records Act by the Otterbein Volunteer Fire and Rescue Department*

Dear Ms. Ewart:

You have requested an informal opinion from the Office of the Public Access Counselor. You allege that the Otterbein Volunteer Fire and Rescue Department (“Department”) violated the Access to Public Records Act (“APRA”). Pursuant to Ind.Code 5-14-4-10(5), I am issuing this letter in response to your request.

You requested various records of the Department on November 26, 2004. Your requests fall into ten categories of records. Among other things, you asked for records regarding “members” of the Department, including a current roster of members, copies of letters of dismissal sent to members in 2003 and 2004, and copies of all letters of resignation tendered by members in 2003 and 2004.

You received a written response from Cy Gerde of the law firm of Hanna, Gerde & Russell on behalf of the Department. His response was dated December 29, 2004. In the Department’s response, it claims that there are no members of the Department that are employees. Mr. Gerde claims that under Indiana law, even volunteers’ personnel records are confidential. He denies you any records that are personnel matters, without specifying which of your requests fall into that category. He also estimates that the cost of supplying the records to you will be \$350 because of the cost to hire someone to find, copy, and send to you all the requested items.

Any person may inspect and copy the public records of a public agency during the agency’s regular business hours, except as provided in section 4 of the APRA. Ind.Code 5-14-3-3(a). One of the exceptions to disclosure are personnel files of public employees. IC 5-14-3-

4(b)(8). Mr. Gerde stated that the Department has no employees. He also cites no specific Indiana law that provides that personnel files of volunteers of a public agency are exempt from disclosure under the Access to Public Records Act. Because volunteers are not public employees, any records pertaining to those volunteers are not exempt from disclosure under the “personnel file” exception. The Department’s denial of these records was in violation of the Access to Public Records Act.

The denial also violates the APRA in two other respects. A public agency is required to respond to a request for records within seven days of receipt if it receives a request by U.S. Mail. IC 5-14-3-9(b). If the December 29 letter was the first response to your November 26 request, it was tardy under the APRA.

Also, the denial of part of your records request must include a statement of the specific exemption or exemptions authorizing the withholding of all or part of the record. IC 5-14-3-9(c). The denial must include the title or position of the person responsible for the denial. Because the denial does not give any citation to authority for withholding the record, does not specify which records are subject to withholding, and does not give the title or position of the person denying the record, it does not meet the APRA’s requirements for denying a record.

Finally, the Department may not charge you a fee in excess of the fee allowed under the APRA, at IC 5-14-3-8(d). The fee that a department of a town may charge must be pursuant to a copy fee schedule adopted by the town council. IC 5-14-3-8(d). The fee schedule adopted by the town council may not exceed the actual cost of a copy, and may not include labor costs or overhead costs. IC 5-14-3-8(d). The Department admits that the charge to you includes labor costs. The excessive copy fee is in violation of the Access to Public Records Act.

Please feel free to share this opinion with the Otterbein Volunteer Fire and Rescue Department. I would be happy to discuss this matter with the Department. I can be reached at (317) 233-9435.

Sincerely,

Karen Davis  
Public Access Counselor

cc: Cy Gerde