

February 2, 2004

Ms. Judy L. Jones
13343 North Miller Drive
Camby, Indiana 46113

*Re: Formal Complaint 04-FC-08
Alleged Denial of Access to Public Records by the Madison Township Board*

Dear Ms. Jones:

This is in response to your formal complaint alleging that the presiding officer of the Madison Township Board violated the Access to Public Records Act (APRA) (Ind. Code 5-14-3-1 *et seq.*), when she denied you access to public records in response to your January 13, 2004, request for records. For the reasons set forth below, I find that there was no violation.

BACKGROUND

On January 13, 2004, the Madison Township Board held a regular meeting. The presiding officer made an audio recording of that meeting. You were not present for the meeting but made a request of the presiding officer for a copy of that audio recording. Your complaint does not state when you made the request, but alleges that your first request was not answered and your second request was refused. Your complaint is dated and signed on January 15, 2004, and was sent to my office by facsimile on that date.

At the same time you were making your request for a copy of the audio recording, the presiding officer for the Board was in contact with this office seeking an opinion on whether the audio recording was a public record subject to disclosure under the APRA. The presiding officer first contacted this office in the early in the morning of January 14, 2004, the day following the meeting. The presiding officer indicated that the tape was made by her for her own personal use, but acknowledged that it was or would be used for preparation of the memorandum or minutes of the meeting because the recording secretary who also tapes the meetings for the Board was not present for that meeting. On January 15, 2004, this office advised the presiding officer that her personal audio recording, just like her personal notes, would not normally be viewed as a public record of a public agency. However, because the audio tape of the meeting on January 13, 2004, was made and used to prepare the memorandum or minutes of the meeting, this office counseled the presiding officer to provide a copy of the tape as requested. The presiding officer subsequently advised this office that she would do so, and that she had in fact already done so.

ANALYSIS

Indiana Code 5-14-3-3 provides that any person has the right to inspect and copy the public records of any public agency. A public agency means, among other things, any town council or township board or commission. IC 5-14-3-2. And, the public records of any such public agency include any photograph, tape recording, or other material that is received, maintained, or filed by or with that public agency. IC 5-14-3-2.

In general, an audio recording of a town council or township board meeting would be considered to be a public record of the town council or township board. Such a record would normally be made, used and kept by the record keeper for the public agency. Certainly, the personal notes of the members of the governing body for the public agency would not be considered the public records of the body. The audio recording in the instant matter is alleged to be the personal recording of the presiding officer. While the personal notes of a member of the governing body would not normally be considered the public record of that entity, in this case the presiding officer's audio recording was made and used for purposes of preparing the memorandum or minutes of the governing body. In my opinion, the audio recording made and used for that purpose became the record of the agency.

That said, there was no violation of law here. Your complaint alleges that you made your request by phone, but suggests that you left a message and did not speak personally with the presiding officer. This was confirmed by the presiding officer. I do not find the 24-hour response time triggered by leaving a voice mail. In any event, your complaint does not establish the time of your request. Aside from the absence of support for a violation of the response time provisions, it seems clear to me that the presiding officer did not refuse to provide the record, but rather exercised good faith and acted in compliance with the APRA. Within the time allowed for a response, the presiding officer sought an informal opinion of this office. That request for an opinion was pending less than a day after the meeting, and less than a day before you brought this complaint. Moreover, the presiding officer tendered a copy of the tape upon receipt of the opinion of this office.¹ I find that the presiding officer acted in conformance with the APRA.

CONCLUSION

For the reasons set forth above, I find that the presiding officer did not violate the APRA in responding to your records request.

Sincerely,

Michael A. Hurst
Public Access Counselor

cc: Ms. Virginia Perry

¹ The presiding officer would have had a reasonable period of time to tender production. Production would have been reasonable after the minutes were approved at the next meeting of the body. Here, the audio recording was produced within days of the meeting. Production was timely and more than reasonable.