

September 17, 2004

Ms. Virginia F. Perry
6467 E. Hadley Road
Mooresville, IN 46158

Re: Formal Complaint 04-FC-147; Alleged Violation of the Access to Public Records Act by Madison Township

Dear Ms. Perry:

This is in response to your formal complaint alleging that Madison Township (“Township”) violated the Access to Public Records Act by failing to respond to your request for documents. For the following reasons, I find that Madison Township violated the Access to Public Records Act.

BACKGROUND

On July 26, 2004 and August 4, 2004, you submitted written requests for records to the Madison Township Trustee. Specifically, you requested copies of paid and unpaid credit card statements from all credit card companies that Madison Township has been using. Having received no response to either request, you filed a formal complaint, which was received by this office on August 18, 2004.

I forwarded a copy of your complaint to Mr. Rodger Birchfield, Trustee of Madison Township. Mr. Stephen Buschmann, Attorney, responded. Mr. Buschmann states that you delivered your request to Madison Township in your capacity as Chairman of the Madison Township Board (“Board”). Mr. Tom Whitley, Financial Chair of the Board, requested the same information as part of the budgeting process. Mr. Birchfield responded to Mr. Whitley’s request, telling him the information would be provided. Mr. Birchfield believed that both requests were made in conjunction with the official business of the Board, and therefore, he believed his response to Mr. Whitley satisfied both requests. The credit card information was given to Mr. Whitley on August 31; because it was the Township’s understanding that the requests were made in conjunction with the official business of the Board, the Township believed your request had

been satisfied. Notwithstanding that belief, Mr. Buschmann states that the information you requested will be provided to you.

ANALYSIS

Madison Township is a public agency for the purposes of the Access to Public Records Act. I.C. §5-14-3-2. Accordingly, any person may inspect and copy its public records during regular business hours, unless the records are excepted from disclosure as confidential or otherwise nondisclosable under I.C. §5-14-3-4. I.C. §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. If that period of time elapses without a response, the request is presumed denied. I.C. §5-14-3-9(a), (b). The Access to Public Records Act requires a response within either twenty-four (24) hours or seven (7) days, depending on how the request was made. If a person making the request is physically present in the office, or makes the request by phone, the public agency must respond within twenty-four hours of receiving the request. If, however, a person makes a request by mail or facsimile, the public agency must respond within seven (7) days of receiving the request.

A timely response to a request need not include production of the requested documents or expressly decline to produce documents responsive to the request. What is contemplated in terms of a response to a request for access to public records is a communication with the requestor. A public agency may comply with its response obligation under the statute by acknowledging receipt of the request and indicating the specific actions the agency is taking toward production of the requested documents.

Your complaint does not state whether your written requests for records were submitted to the Township in person, by facsimile, or by mail. However, you received no response from the Township as of August 18, the day your complaint was faxed to this office, which was more than seven (7) days after your request. Seven (7) days is the longest period in which an agency has to respond to a request for access to public records. I find that the Township failed to respond to your request in a timely manner, and that its failure to respond is a violation of the Access to Public Records Act.

I note that both of your requests were made in writing. Although it is unclear when Mr. Whitley's request was made, it appears as if his request was made verbally and the Township replied verbally. While the Township may have believed that its response to Mr. Whitley satisfied both Mr. Whitley and your requests, pursuant to I.C. §5-14-3-9, the Township was required to respond to your written requests in writing. Although the issue is not raised by your complaint, failure to respond to a written request in writing would violate the Access to Public Records Act.

CONCLUSION

For the foregoing reasons, I find that Madison Township violated the Access to Public Records Act by failing to respond to your request for documents.

Sincerely,

Karen Davis
Public Access Counselor

cc: Mr. Rodger Birchfield