



STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

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June 4, 2010

Ms. Sonja Graf
6364 N. Kivett Road
Monrovia, IN 46157

Re: Formal Complaint 10-FC-112; Alleged Violation of the Access to Public Records Act by the Gregg Township Board

Dear Ms. Graf:

This advisory opinion is in response to your formal complaint alleging the Gregg Township Board (the "Board") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-3 *et seq.*, by denying you access to public records. A copy of Board's response to your complaint is enclosed.

BACKGROUND

In your complaint, you allege on April 14, 2010, the Board held a meeting to discuss incurring an emergency loan debt. You claim that according to Ind. Code § 36-6-6-14(d), "the board is to support their [sic] decisions based on the Indiana codes." You requested "any and all documents [the Board] used to support their [sic] decision to incur the debt." However, at the meeting the trustee denied your request and subsequently sent you a letter informing you that your request was not specific enough.

My office forwarded a copy of your complaint to Board. Attorney Stephen R. Buschmann responded on the Board's behalf. Mr. Buschmann states that at the April 14th meeting, Linda Bell of Reedy Financial Group, Inc. made a presentation to the Board regarding the fire and emergency services loan. Ms. Bell also distributed an executive summary of her presentation, which was distributed to the audience. Mr. Buschmann claims that you received a copy of the executive summary. Copies of Ms. Bell's complete presentation were also available on a table at the meeting for anyone who wanted a copy. Mr. Buschmann claims that there were "no other packets of information or documents delivered to the Township Board before or after the meeting." Mr. Buschmann acknowledges that individual Board members may have reviewed other records of the township on their own initiative, but claims that he would have to "interrogate" each member of the Board in order to determine what records, if any, the member considered. Mr. Buschmann does not believe the APRA requires him to do so.

ANALYSIS

The public policy of the APRA states, “[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.” I.C. § 5-14-3-1. The Board is a “public agency” under the APRA. I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy the Board’s public records during regular business hours unless the public records are excepted from disclosure as nondisclosable under the APRA. I.C. § 5-14-3-3(a).

Here, the Board claims that your request was not made with reasonable particularity. Under the ARRA, a request for inspection or copying must identify with reasonable particularity the record being requested. I.C. § 5-14-3-3(a). While the term “reasonable particularity” is not defined in the APRA, it has been addressed a number of times by the public access counselor. *See Opinions of the Public Access Counselor 99-FC-21* and *00-FC-15* for two examples. Counselor Hurst addressed an issue similar to the present issue in *Opinion of the Public Access Counselor 04-FC-38*:

A request for public records must “identify with reasonable particularity the record being requested.” IC 5-14-3-3(a)(1). While a request for *information* may in many circumstances meet this requirement, when the public agency does not organize or maintain its records in a manner that permits it to readily identify records that are responsive to the request, it is under no obligation to search all of its records for any reference to the information being requested. Moreover, unless otherwise required by law, a public agency is under no obligation to maintain its records in any particular manner, and it is under no obligation to *create* a record that complies with the requesting party’s request.

Opinion of the Public Access Counselor 04-FC-38 (2004), available at <http://www.in.gov/pac/advisory/files/04-FC-38.pdf>. Mr. Buschmann maintains that the Board cannot identify the records that you seek without “interrogating” individual members of the Board. If the Board maintained files regarding the April 14th meeting that allowed the Board to readily identify the records you seek (i.e., any and all records used to support the Board’s decision), then in my opinion the Board would be required to produce the contents of the file unless an exception to the APRA applies. Here, however, it appears that the information upon which the Board came from a number of different sources, so it would be difficult or impossible for the Board to identify responsive records. Consequently, I agree that your request was not made with sufficient particularity so as to allow the Board to readily identify responsive records and respond accordingly.

As to your allegation that the Board was required by Ind. Code § 36-6-6-14(d) to consider specific records or information in the course of its decision at the April 14th meeting, the resolution of that issue is outside the purview of this office.

CONCLUSION

For the foregoing reasons, it is my opinion that the Board did not violate the APRA.

Best regards,

A handwritten signature in black ink that reads "Andrew J. Kossack". The signature is written in a cursive style with a large, prominent 'A' and 'K'.

Andrew J. Kossack
Public Access Counselor

Cc: Stephen R. Buschmann