

October 24, 2007

Jo Spangler
5616 Winthrop Avenue
Indianapolis, Indiana 46220

Re: Formal Complaint 07-FC-296; Alleged Violation of the Access to Public Records Act by the Marion County Washington Township Trustee

Dear Ms. Spangler:

This is in response to your formal complaint alleging the Marion County Washington Township Trustee's Office ("Trustee") violated the Access to Public Records Act (APRA) (Ind. Code §5-14-3) by denying you access to records. A copy of the Trustee's response is enclosed for your reference. It is my opinion that while the Trustee's initial response was untimely under the APRA, the Trustee did not otherwise violate the APRA.

BACKGROUND

You allege that on August 29, 2007 you delivered to the Trustee your written request for copies of a number of records. You allege that the Trustee inquired as to the name of your employer. You further allege that you did not receive a response to your request until twelve days after making the request when the Trustee called you to indicate you would be notified of copy costs. You mailed your complaint on September 24, and my office received it on September 26.

The Trustee responded to your complaint by letter dated October 17 from attorney Brian Crist. Mr. Crist contends that you requested production of records being used by the Trustee for submission of the Washington Township budget. He further indicated that many of the financial records from the previous administration were missing. In addition, certain Township functions (e.g. fire services) were assumed by Marion County the previous year. These factors in addition to the work the Trustee was doing in September to draft the new budget worked to prevent the Trustee from producing the records until late September after the budget was approved. Mr. Crist indicates that seven business days after your request he and the Trustee told you the Trustee would comply with your request after the budget was approved. On October 1 the Trustee sent

you a letter to schedule a time for you to inspect the records. On October 8 you received copies of records responsive to your request.

ANALYSIS

Indiana Code §5-14-3-3(a) provides that any person may inspect and copy the public records of any public agency during the regular business hours of the agency, except as provided in section 4 of APRA. A “public record” means any writing, paper, report, study, map, photograph, book, card, tape recording or other material that is created, received, retained, maintained or filed by or with a public agency. I.C. §5-14-3-2.

The Trustee is clearly a public agency for the purposes of the APRA. I.C. §5-14-3-2(1)(2). Accordingly, any person has the right to inspect and copy the public records of the Trustee during regular business hours unless the public records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. I.C. §5-14-3-3(a).

A request for records may be oral or written. I.C. §5-14-3-3(a); §5-14-3-9(c). If the request is delivered by mail or facsimile and the agency does not respond to the request within seven days of receipt, the request is deemed denied. I.C. §5-14-3-9(b). If the request is made orally or by the person appearing at the office of the public agency and the agency does not respond within 24 hours, the request is deemed denied. I.C. §5-14-3-9(a).

It has long been the opinion of the Office of the Public Access Counselor that “response” in this provision does not equal production of the records. The response could contain an acknowledgement the request has been received and information regarding how or when the agency intends to comply.

A public agency is required to regulate any material interference with the regular discharge of the functions or duties of the public agency or public employees. I.C. §5-14-3-7(a). However, section 7 does not operate to deny to any person the rights secured by section 3 of the Access to Public Records Act. I.C. §5-14-3-7(c). The APRA sets forth no prescribed timeframe when the records must be produced by a public agency. The Office of the Public Access Counselor has said records must be produced within a reasonable period of time, based on the facts and circumstances. Consideration of the nature of the requests (whether they are broad or narrow), how old the records are, and whether the records must be reviewed and edited to delete nondisclosable material is necessary to determine whether the agency has produced records within a reasonable timeframe.

In this case, you appeared at the Trustee’s office on August 29 to deliver your request for copies of records. Because you delivered your request in person, the Trustee had a duty to respond to your request within 24 business hours, so by the same time of day the following business day. Here both the Trustee and you acknowledge the Trustee verbally responded to your request several days after the Trustee received the request, which does not comply with I.C. §5-14-3-9(a).

Regarding time for the Trustee to produce the records in response to your request, though, I do not believe the Trustee violated the APRA by indicating it would produce the records after the budget was approved in late September. The office of the public access counselor has stated that records must be produced within a reasonable period of time, based on the facts and circumstances. Consideration of the nature of the requests (whether they are broad or narrow), how old the records are, and whether the records must be reviewed and edited to delete nondisclosable material are necessary to determine whether the agency has produced records within a reasonable timeframe. Past public access counselors have addressed this issue on several occasions. I have recently addressed the issue in *Opinion of the Public Access Counselor 07-FC-249*, finding five weeks was not an unreasonable period of time for the Marion County Election Board to produce records pursuant to a request.

Here, the Trustee has shown it was involved in a budget process for the weeks between receiving your request and producing the records you requested. In addition, the Trustee was faced with missing records from a prior administration as well as functions of the Township having been moved to the County level. While the Trustee has a duty to provide access to records to those who request them, the Trustee must also take care to regulate any material interference with the regular discharge of duties of the office (I.C. §5-14-3-7(a)), like submitting the Township budget to the Township Board.

I understand you have now received all records responsive to your request.

CONCLUSION

For the foregoing reasons, it is my opinion that while the Trustee's initial response was untimely under the APRA, the Trustee did not otherwise violate the APRA.

Best regards,



Heather Willis Neal
Public Access Counselor

cc: Frank Short, Washington Township Trustee
Brian Crist, Ice Miller