

March 1, 2005

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

*Re: Formal Complaint 05-FC-25; Alleged Violation of the Access to Public Records Act by the Madison Township Trustee*

Dear Ms. Perry:

This is in response to your formal complaint alleging that the Madison Township (Morgan County) Trustee ("Trustee") violated the Access to Public Records Act ("APRA") by failing to respond to your request for records. I find that the Trustee did not violate the Access to Public Records Act.

#### BACKGROUND

On January 19, 2005, you sent an e-mail to Rodger Birchfield, Trustee requesting "the number of visits the investigator made as Township Assistance Investigator for the months of November and December 2004, including the street location for each investigation." Also, you asked for the location of the township offices in which the township assistance records are maintained.

You state that you had not received any response as of the date that you filed your formal complaint with my office, on January 31, 2005. I sent a copy of your complaint to the Trustee. Township attorney Stephen R. Buschmann sent me a written response, which he also forwarded to you. In his response, Mr. Buschmann states that Mr. Birchfield has no record of having received a January 19 e-mail from you. He also states that the e-mail address that you used is not the township's e-mail, but rather Mr. Birchfield's personal e-mail account. His letter sets forth a substantive response to your request. With respect to the number of visits of the township assistance investigator in November and December 2004, there is no record setting forth this information. However, Mr. Birchfield is willing to review each case record and give you the information you seek. Also, Mr. Buschmann states that with respect to the street location of each township assistance investigation, he states that this information is in the assistance files, which

are confidential records “pursuant to state and federal law.” Hence, the township denies you this information. Finally, he affirmatively states that the township assistance files are located in the Trustee’s office, but points out that this request is for information rather than a record. Mr. Buschmann asserts that no violation of the APRA has occurred.

Since his response, you have received a February 10 letter stating that the investigator worked on eight applications during the months of July through December 2004, before resigning in December 2004. You continue to complain that this information does not satisfy your January 19, 2005 request.

## ANALYSIS

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). Furthermore, a public agency that receives a request for a record via electronic mail is required to respond within seven (7) calendar days of receipt of the request, or the failure to respond is deemed a denial under APRA. IC 5-14-3-9(b). If the Trustee had received your request for records, he would have been required to respond to it within seven days. However, Mr. Buschmann states that you did not send your request to an e-mail account that is utilized by Mr. Birchfield to conduct the township’s business, as evidenced by the e-mail address contained on the copy of the e-mail that you sent me. Mr. Birchfield also denies having received the message at all. It is not sufficient to send a request for records to an individual who is a public official. Rather, the request must be sent to the public agency, either to its official street address, or if one exists, to the e-mail account set up by the township to receive and send messages to the Trustee and his or her staff. Based on the assertions of the Trustee, I cannot find that the Trustee failed to respond within the timeframes required by the APRA.

Because I now have the substantive response to your request for records, I offer the following guidance. A request for a record containing specific data elements may often be met with the response that no record is maintained that is responsive to that request, and that appears to be the case here. Mr. Birchfield is not required to conduct research and compile the data that you are requesting in order to fulfill your request for a record. The information contained in his February 10 letter misses the mark, but nevertheless his continued failure to provide you with data that is not otherwise contained in a record is not a violation of the Access to Public Records Act.

Similarly, a document containing the street locations of each investigation is subject to the same justification for denial. I note that Mr. Buschmann cites “federal and state law” as a basis for denying you access to the township case files, and apparently to the street locations of the investigations. This would not be a sufficient denial if you had requested access to case files or part of the case files, because Mr. Buschmann fails to cite the specific state and federal statutes applying to these case records. It is not sufficient to make a conclusory statement that state and federal law apply to a record. A written denial under the APRA must contain a statement of the specific exemption or exemptions authorizing the withholding of all or a part of the public record. IC 5-14-3-9(c)(2).

Mr. Buschmann has responded to your question about the location of the township assistance files, but here too, your request for information, not otherwise contained in a record, is not subject to review under the Access to Public Records Act, because the APRA concerns records, not mere information solicited in a query to a public agency.

#### CONCLUSION

For the foregoing reasons, I find that the Madison Township Trustee did not violate the Access to Public Records Act in its failure to respond to your record request. However, the Trustee is advised to cite the specific law or laws that make the case files, or part of the case files, confidential or subject to nondisclosure at the discretion of the Trustee.

Sincerely,

Karen Davis  
Public Access Counselor

cc: Mr. Stephen R. Buschmann