

March 15, 2005

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

Re: Formal Complaint 05-FC-33; Alleged Violation of the Access to Public Records Act by the Madison Township Trustee of Morgan County

Dear Ms. Perry:

This is in response to your formal complaint alleging that the Madison Township Trustee ("Trustee") violated the Access to Public Records Act ("APRA") by failing to timely provide you with the finalized 2004 annual report. I find that the Trustee did not violate the Access to Public Records Act.

BACKGROUND

On January 24, 2005 you sent a letter to the Trustee, Rodger Birchfield, declaring that "I have not seen the finalized copy of the [annual] report" and asking that Mr. Birchfield send you the finalized copy of the 2004 annual report, "in accordance with [Ind.Code 36-6-6-9(e)]." Stephen Buschmann, trustee attorney, sent you a reply by electronic mail for the Trustee, dated January 25, 2005. In it, Mr. Buschmann states that the annual report was filed with the county auditor, with the notation that the Board did not take action on the report. He also stated that "I am certain that Rodger will provide you with an official copy of the annual report as filed."

You filed your formal complaint with my office on February 14. In your complaint, you allege that you have yet to receive a copy of the finalized annual report as promised by Mr. Buschmann. I sent a copy of your complaint to the Trustee. Mr. Buschmann replied in writing. I have enclosed a copy of the Trustee's response for your reference. In his response, Mr. Buschmann cites the two statutory provisions applicable to annual reports of the township. He contends that the Trustee has provided a copy of the 2004 annual report to you as a member of the Madison Township Board, pursuant to the statute mandating that the Trustee present the annual report to the township legislative body at its annual meeting; therefore, you have always been in possession of the very record that you claim to have been denied. He also stated that Mr.

Birchfield signed a copy of the annual report, but that the report is identical in all other respects to the report that was provided to the Board prior to its January 18, 2005 annual meeting to consider the annual report. It was discovered, after Mr. Buschmann's January 25 response stating that the Trustee would provide you with the annual report, that you already had the annual report pursuant to the above statutory procedures. The Trustee placed a copy of the signature page from his copy of the annual report in your mailbox. You acknowledged receiving the signature page, but believe you have still been denied the remainder of the report.

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. IC 5-14-3-3(a). A public agency that receives a request for records via U.S. Mail must respond within seven (7) days, or the failure to respond is deemed a denial under the APRA. IC 5-14-3-9(b).

The January 25 e-mail response of trustee attorney Buschmann to your January 24 mailed request meets the statutory requirements under the APRA, and you do not raise any issue regarding response time. Rather, you state that you still have not received the 2004 annual report. Mr. Buschmann contends that you have had the report that you are seeking since the January 18 annual meeting of the Board.

Under IC 36-6-4-12(a), at the annual meeting of the township legislative body under IC 36-6-6-9, the executive [the trustee] shall present a complete report of all receipts and expenditures of the preceding calendar year. January 18, 2005 was the annual meeting of the township legislative body of Madison Township, of which you are Chairman. Under IC 36-6-6-9, the legislative body shall consider and approve in whole or in part, the annual report of the executive presented under IC 36-6-4-12. When the examination of the report is completed, the legislative body shall take action on the report, specifying the parts of the report that are altered or disallowed. IC 36-6-6-9(a). The report remains under the control of the legislative body and in custody of its chairman, who shall keep it open to inspection by taxpayers of the township. IC 36-6-6-9(e).

According to Mr. Buschmann, the Board considered the annual report on January 18, but did not take any action on the report. He further contends that no action can be taken at a subsequent meeting on the annual report because there is no statutory authority for the Board to take action on the annual report after the annual meeting. You state that at a January 21 meeting of the Board, the Board disapproved the annual report. You enclose a copy of a letter that you sent to the state board of accounts listing some of the outstanding deficiencies in the annual report.

The gravamen of your complaint seems to be that the Trustee has a version of the annual report that you have not seen. This does not appear to be the case, either on the facts that I have received or on the law pertaining to the annual report. Under IC 36-6-6-9, the legislative body may take action to approve the annual report, or to alter or disallow part of the annual report. You have stated that the Board did not take any action on the annual report except to disapprove it. In addition, the Trustee has stated that you had received, on January 18, the only annual

report that exists, except for the page on which the Trustee's signature was placed. That page has been provided to you. On the facts now before me, I do not find that the Trustee denied you the annual report under the Access to Public Records Act, because you had already received the report on January 18.

CONCLUSION

For the foregoing reasons, I find that the Madison Township Trustee did not violate the Access to Public Records Act.

Sincerely,

Karen Davis
Public Access Counselor

cc: Stephen R. Buschmann