



STATE OF INDIANA

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November 10, 2009

Mr. Rory Lee Hill
1804 Kapok St. SW
DeMotte, IN 46310

Re: Formal Complaint 09-FC-233; Alleged Violation of the Access to Public Records Act by the Keener Township Board

Dear Mr. Hill:

This advisory opinion is in response to your formal complaint alleging the Keener Township Board (“Board”) violated the Access to Public Records Act (“APRA”), Ind. Code § 5-14-3-1 *et seq.*, by denying you access to public records.

BACKGROUND

I initially note that this matter relates to a previous complaint that you filed in October of this year. *See Opinion of the Public Access Counselor 09-FC-205.* In this present complaint, you allege that you requested “the official meeting minutes from the Keener Township Board” on September 4th, September 28th, and October 5th of this year. You acknowledge that the Board has provided you with audio recordings of the meetings, but you still want “official copies” of the minutes. You also argue that you submitted a valid records request when you addressed your written request to the Keener Township Trustee’s mailing address, which is also the trustee’s home. Along with your complaint, you enclosed a copy of the trustee’s business card, which lists her office as 321 15th Street S.E., DeMotte, Indiana 46310 and her mailing address as 16900 N. U.S. Hwy. 231, DeMotte, Indiana 46310.

Board President John Boissy responds to your complaint by saying that he believes you did not submit a valid request to the Board when you submitted it to the Keener Township Trustee’s home address. Mr. Boissy notes that the Board conducts its meetings and business at 321 15th Street S.E. rather than the address where you submitted your request: 16900 N. U.S. Hwy. 231. Mr. Boissy cites the opinion of my predecessor, Counselor Neal, who opined that a records request sent to the home of a public official rather than the public agency’s official mailing address was not a valid request. *See Opinion of the Public Access Counselor 08-FC-78.*

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 does not dispute that it is a public agency for the purposes of the APRA. I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy the public records of the Board 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).

Your complaint notes that you are seeking an opinion regarding whether or not you submitted a valid records request when you addressed your request to the mailing address provided by the trustee, which was also her home address. Mr. Boissy cites to Counselor Neal’s opinion in the Gregg Township Trustee matter (“*Gregg*”) in arguing that your request was not valid because you sent it to the trustee’s home. *See Opinion of the Public Access Counselor 08-FC-78*. Mr. Boissy’s position on this issue is certainly understandable given Counselor Neal’s opinion in *Gregg*. However, there are important differences between *Gregg* and this matter.

In *Gregg*, the business address of the trustee was not the trustee’s home; it was a post office box that was different than the trustee’s home address. The requester was aware of the post office box address because he submitted requests for records in the past to that address and not to the trustee’s home. Nevertheless, the requester argued that the trustee should have to receive records requests at her home because she used part of her home as an office and performed some business functions there. Under those circumstances, Counselor Neal advised: “It is my opinion it is reasonable for the Trustee to direct official communications to the official address [i.e., the post office box] and telephone number of the township and away from her home address and telephone number.” *Id.*

In this case, the trustee informed you that her mailing address was, in fact, her home address. Counselor Neal’s opinion in *Gregg* stands for the proposition that a requester is obligated to submit a records request to the mailing address provided by the public agency. An opinion to the contrary in *Gregg* would have opened the flood gates for requesters to submit records requests to the homes of public officials throughout the state. As Counselor Neal rightly noted, the APRA applies to public *agencies* and not public *officials*. However, where a public agency’s advertised mailing address is also a public official’s home address (as it is in this case due to the business card that the trustee provided to you), a requester acts reasonably by addressing a request for access to public records to that address.¹

¹ I express no opinion on the question of whether the trustee’s “official” mailing address should be at her home or at the business office of the township. My opinion stands only for the proposition that when a trustee advertises a certain address as the trustee’s mailing address and that address also happens to be the trustee’s home address, an individual seeking access to public records acts reasonably by submitting a request to the address provided by the trustee. The propriety or impropriety of the trustee’s use of her home address as her official mailing address is a matter for the township rather than this office.

You also state that the Board denied your request for access to minutes from its meetings, although the Board did grant you access to audio recordings of its meetings. Regarding minutes and memoranda, the ODL provides the following:

(b) As the meeting progresses, the following memoranda shall be kept:

- (1) The date, time, and place of the meeting.
- (2) The members of the governing body recorded as either present or absent.
- (3) The general substance of all matters proposed, discussed, or decided.
- (4) A record of all votes taken, by individual members if there is a roll call.
- (5) Any additional information required under IC 5-1.5-2-2.5.

(c) The memoranda are to be available within a reasonable period of time after the meeting for the purpose of informing the public of the governing body's proceedings. The minutes, *if any*, are to be open for public inspection and copying.

I.C. § 5-14-1.5-4 (emphasis added). Thus, the ODL does not require a governing body to create minutes of its meetings. If the Board does not keep any minutes of its meetings, it did not violate the APRA (or the ODL) by denying your request. “[T]he APRA governs access to the public records of a public agency that exist; the failure to produce public records that do not exist or are not maintained by the public agency is not a denial under the APRA.” *Opinion of the Public Access Counselor 01-FC-61*; see also *Opinion of the Public Access Counselor 08-FC-113* (“If the records do not exist, certainly the [Agency] could not be required to produce a copy....”).

CONCLUSION

For the foregoing reasons, it is my opinion that you submitted a valid request for public records when you addressed your request to the address provided by the trustee notwithstanding the fact that it was the trustee’s home address. Further, in my opinion the Board did not violate the APRA by denying you access to records that do not exist.

Best regards,



Andrew J. Kossack
Public Access Counselor

Cc: John Boissy, Keener Township Board