



# STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

PUBLIC ACCESS COUNSELOR  
JOSEPH B. HOAGE

Indiana Government Center South  
402 West Washington Street, Room W470  
Indianapolis, Indiana 46204-2745  
Telephone: (317)233-9435  
Fax: (317)233-3091  
1-800-228-6013  
[www.IN.gov/pac](http://www.IN.gov/pac)

October 18, 2011

Steve A. Charles  
214 N.W. 6<sup>th</sup> Street  
Washington, Indiana 47501

*Re: Formal Complaint 11-FC-251; Alleged Violation of the Access to Public Records Act by the Washington Township Trustee*

Dear Mr. Charles:

This advisory opinion is in response to your formal complaint alleging the Washington Township Trustee ("Trustee") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Albert Showalter, Trustee, responded to your formal complaint. His response is enclosed for your reference.

## BACKGROUND

On September 6, 2011, you submitted a written request to the Trustee for the following public records:

1. Who exactly is MT Enterprises? I am requesting name(s), address(s), and phone number(s), and from what city and state MT Enterprises does business. And for what reason were they compensated well over \$30,000 in your last budget? If MT Enterprises was compensated for services rendered, for the Trustee, what was the nature of said services provided, and was there a "bidding process" involved in said services? I am also requesting a copy of MT Enterprises Federal Tax ID number as well as a copy of their Indiana Sales Tax exemption.
2. Who exactly is Michelle Guy that was listed as being paid \$28,400 for services rendered? Would she by any change be related to Police Chief Tim Guy of the Washington Police Department?
3. Who exactly is Vicky Guy, who was compensated \$20,844.47 for services rendered? Would she by any chance be related to Police Chief Tim Guy?

4. Who exactly is Catherine Showalter, who was compensated for \$25,000 for services rendered? Would she by any chance be related to Walter "Pete" Showalter?
5. Who exactly is Rick Showalter, who was compensated \$160.00 for services rendered? What was the nature of his services rendered, did his services involve a "bidding process", and is he by any chance related to Albert "Pete" Showalter.
6. Who exactly is Jean Showalter, who was compensated \$3,900 for services rendered? And is she by any chance related to Albert "Pete" Showalter?
7. Who exactly is Joe Showalter, which was compensated \$800 for services rendered? What was the nature of said services rendered by Joe, and was it a "bidding process", and is he by any chance related to Albert "Pete" Showalter?

On September 14, 2011, Attorney Harry W. Hanson, responded on behalf of the Trustee and provided that he was reviewing the applicable statutes in regard to your request and that a response would be forthcoming. As of September 26, 2011, the date you filed your formal complaint with the Public Access Counselor's Office, you have yet to receive any records responsive to your request.

In response to your formal complaint, Mr. Showalter submitted a copy of the Trustee's response to your September 6, 2011 request for records.

#### ANALYSIS

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

A request for records may be oral or written. *See* I.C. § 5-14-3-3(a); § 5-14-3-9(c). If the request is delivered in person and the agency does not respond within 24 hours, the request is deemed denied. *See* I.C. § 5-14-3-9(a). If the request is delivered by mail or facsimile and the agency does not respond to the request within seven (7) days of receipt, the request is deemed denied. *See* I.C. § 5-14-3-9(b). Under the APRA, when a request is made in writing and the agency denies the request, the agency must deny the request in writing and include a statement of the specific exemption or exemptions authorizing the withholding of all or part of the record and the name and title or position of the person responsible for the denial. *See* I.C. § 5-14-3-9(c). A response from the public agency could be an acknowledgement that the request has been received and information

regarding how or when the agency intends to comply. Here, the Trustee responded to your request within the times frames proscribed by the APRA.

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 by the public access counselor in a number of prior opinions. *See Opinions of the Public Access Counselor 99-FC-21 and 00-FC-15* for two examples. Counselor Hurst addressed this 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).

In reviewing your request made of the Trustee, it appears you requested information rather than records. Public agencies are not obligated to create records in response to a request or to answer generalized inquiries. *See Op. of the Public Access Counselor 10-FC-120*. As the Trustee was not obligated to answer generalized inquiries or create new records in response to a records request, it is my opinion that it did not violate the APRA in response to records request.

As the Trustee went beyond the requirement of the APRA and did provide substantive responses to your request, I will address the timeliness of said responses. The APRA does not prescribe timeframes for the actual production of records. The public access counselor has stated repeatedly that records must be produced within a reasonable period of time, based on the facts and circumstances of the request. Considering factors such as 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. The APRA *requires* the City to separate and/or redact confidential information in public records before making the disclosable information available for inspection and copying. *See* I.C. § 5-14-3-6(a). Section 7 of the APRA requires a public agency to regulate any material interference with the regular discharge of the functions or duties of the public agency or public employees. *See* 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. *See* I.C. § 5-14-3-7(c). The ultimate burden lies with the public agency to show the time period for producing documents is reasonable. *See Opinion of the Public Access Counselor 02-FC-45.*

Under the circumstances provided, it is my opinion that the Trustee has not acted unreasonably. Under the APRA, a public agency shall “regulate any material interference with the regular discharge of the functions or duties of the public agency or public employees.” *See* I.C. § 5-14-3-7(a). *See also Opinion of the Public Access Counselor 09-FC-115* (two months was not an unreasonable production time where agency director and records request handler recently assumed the duties of another position and needed time to review and redact confidential information); *see also Opinion of the Public Access Counselor 07-FC-327* (three months was not an unreasonable amount of time to respond to seven requests with approximately 1000 pages of responsive documents; 34 days was not unreasonable amount of time to produce three-page document considering number of other pending requests); *see also Opinion of the Public Access Counselor 11-FC-72* (four months was not an unreasonable amount of time to respond to thirteen expansive requests when the City made multiple disclosures of records pursuant to the request during the time period, all while handling a separate request which resulted in the production of over three-thousand pages of documents).

Here, you submitted ten (10) separate requests for information, not records, on September 6, 2011. On September 14, 2011, you were advised in writing from the Trustee’s attorney that your request had been received and that a response would be forthcoming. On October 18, 2011, the Trustee provided all responses to your request. At the same time the Trustee was researching and compiling the information in response to your request, it was required to maintain the regular duties required of the office. As such, I do not believe the Trustee took an unreasonable amount of time to collect, review, and provide to you the information that was requested in light of the breadth and vast nature of your requests.

#### CONCLUSION

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

Best regards,

A handwritten signature in black ink, appearing to read "J. Hoage". The signature is stylized and cursive.

Joseph B. Hoage  
Public Access Counselor

cc: Albert Showalter