



STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

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April 11, 2012

Mr. James A. Williams
18891 Round Lake Road
Noblesville, Indiana 46060

Re: Formal Complaint 12-FC-71; Alleged Violation of the Access to Public Records Act by the Noblesville Township Trustee

Dear Mr. Williams:

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

BACKGROUND

In your formal complaint you allege the following:

"Over the past year numerous electronic letters or memorandums have been furnished to the Trustee and no acknowledgement is given as receive, nor are any records copies for viewing. Most recently, a Letter/Memorandum was furnished to the Trustee regarding Benefits and Indemnification of medical payment paid. This correspondence was dated March 9, 2012 and as of March 19, 2012, you have not received any acknowledgment of this request nor have I received the requested material. During the past year the same pattern of responsive exists with the Trustee. Numbers other requests for documents have been sent electronically during the past year and the same treatment and acknowledgment has been given to all prior requests. Since nothing has been acknowledged or heard, I can only assume deemed denied by law."¹

With your formal complaint you provided correspondence that you received from the Trustee that originated from Thomas Pitman, an attorney representing the Trustee. You further provide that you are an elected member of the Noblesville Township Board.

¹ I.C. § 5-14-5-7 provides that a person that chooses to file a formal complaint with the counselor must file the complaint not thirty days after the denial. Accordingly, I will only address your request that was submitted to the Trustee on March 9, 2012, as it was timely filed with our office on March 19, 2012.

In response to your formal complaint, Mr. Jefferson advised that as an elected representative, you always have access to any and all information requested. As an initial matter, your previous requests submitted to the Trustee have been difficult to understand. A request made under the APRA must be reasonably particular. Notwithstanding this factor, all requests that you have submitted have been properly acknowledged and thereafter, documents have been made available to you. The Trustee has always made a good-faith effort to respond to your requests pursuant to the requirements of the APRA.

It is pertinent to note that you regularly submit numerous requests to the Trustee. You generally do not differentiate whether or not your request is being made in the course of your elected duties, pursuant to the APRA, or for other reasons. As to the March 9, 2012 request, Mr. Jefferson provided that the Trustee had previously orally responded to your request and you were invited to inspect the records. Ms. Caldwell responded to your request in writing on March 14, 2012 and you were again invited to inspect the documents, at your convenience. You thereafter requested copies of the records, which was not part of your original request. When told you would have to pay for the record, you informed the Trustee that you would seek reimbursement for the costs as a duly-elected Board member.

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 twenty-four 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 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.

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.



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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 an agency 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.*

As to your March 9, 2012 written request, the Trustee received your request on March 14, 2012. On March 20, 2012, the Trustee responded to your request in writing and provided that the records would be available to you and that you were welcome to inspect them at your convenience. On March 21, 2012, you responded to the Trustee's acknowledgement in writing and reiterated your request for copies. On March 22, 2012, the Trustee responded to your correspondence in writing and provided you were welcome to come and get the records from the Trustee's Office. As such, it is my opinion that the Trustee complied with the requirements of section 9 of the APRA in response to your March 9, 2012 request, as it was timely acknowledged on March 20, 2012, six days after its receipt. You were informed in writing that the records were available for inspection on March 20, 2012 and on March 22, 2012 you were advised in writing that you could come to the Trustee's Office to receive the copies. Accordingly, it is my opinion that the Trustee produced the records that were responsive to your request in a reasonable period of time.

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 written in a cursive style with a large initial "J" and a distinct "Hoage" following.

Joseph B. Hoage
Public Access Counselor

cc: Paul Jefferson