



STATE OF INDIANA

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October 11, 2016

Mr. Phillip A. Herbig
2521 East 7th Street
Anderson, Indiana 46012

Re: Formal Complaint 16-FC-225; Alleged Violation(s) of the Access to Public Records Act and the Open Door Law by the Anderson Township Trustee

Dear Mr. Herbig:

This advisory opinion is in response to your formal complaint alleging the Anderson Township Trustee ("Trustee") violated the Access to Public Records Act ("APRA"), Indiana Code § 5-14-3-1 et. seq and the Open Door Law ("ODL"), Indiana Code § 5-14-1.5. Mr. John Bostic, Trustee, responded to the formal complaint on September 30, 2016. His response is attached for your review. Pursuant to Indiana Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on September 6, 2016.

BACKGROUND

Your complaint dated September 6, 2016, alleges the Anderson Township Trustee did not give you information about the September 8, 2016 budget meeting. Additionally, your complaint also alleges denial to access to the State Board of Accounts and statement of record of indebtedness.

The Trustee provided information regarding budget meetings as given to you over the phone and referenced Gateway as current with dates of meetings. You also visited the Trustee on the dates of August 3, 2016 and July 20, 2016, the Trustee states you were provided with any information requested.

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 Indiana Code § 5-14-3-1*. The Anderson Township Trustee is a public agency for the purposes of the APRA. *See Indiana Code § 5-14-3-2(n)(1)*. Accordingly, any person has the right to inspect and copy the Trustee's public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. *See Indiana Code § 5-14-3-3(a)*.

The Trustee has partially provided the information which was requested by you during two (2) visits to the Trustee's office. It appears as if the Trustee does not have any bonds, loans, or other current indebtedness as you requested, therefore there is nothing else to produce. This Office does not regulate whether such information is required to be posted; that is a State Board of Accounts provision.

The ODL classifies the Trustee as a political subdivision, which must adhere to these rules in *Indiana Code 6-1.1-17-20*. The Trustee must upload the following information to Gateway: the estimated budget, the time and place at which the political subdivision will hold a public hearing on the items described in subdivisions. Budget notice shall have the time and location of meeting at which budgets will be adopted. The budget must be submitted through Gateway at least ten (10) days before the public hearing. They must also comply with posting of the notice at the meeting place at least forty-eight (48) hours before the hearing and meeting.

You suggest the Trustee's Office told you the September 8, 2016 meeting was not being held contrary to what was put on Gateway. I am unsure as to why the Trustee's Office would relay misinformation if it was properly posted on Gateway. The Trustee's office was in accordance with the Code by properly advertising the adoption meeting on Gateway as referenced in your complaint. The new budget is posted on Gateway and the next public hearing is on October 6, 2016 at 6p.m. It is unclear in your complaint if the notice was posted at the meeting place forty-eight (48) hours before hearing.

With the response from the Trustee's office of your complaint, pursuant to *Indiana Codes 5-14-1.5* and *5-14-3*, if notice was not posted 48 hours before the public hearing the Trustee's office would not be in compliance with the ODL, but there was no issue raised in your complaint in regards to posting of physical notice at the meeting location.

A complete breakdown of public hearing requirements can be found at:

<http://www.in.gov/pac/files/PUBLIC%20ACCESS%20TO%20BUDGET%20HEARINGS.pdf>

Please do not hesitate to contact me with any further questions.

Regards,

A handwritten signature in black ink, appearing to read 'LH Britt', with a long horizontal flourish extending to the left.

Luke H. Britt
Public Access Counselor