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**OPINION OF THE PUBLIC ACCESS COUNSELOR**

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DOLORIS A. SCHOSKER

*Complainant,*

v.

GERMAN TOWNSHIP BOARD OF TRUSTEES (ST. JOSEPH COUNTY)

*Respondent.*

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Formal Complaint No.

20-FC-133

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Luke H. Britt

Public Access Counselor

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BRITT, opinion of the counselor:

This advisory opinion is in response to a formal complaint alleging the German Township Trustee violated the Access to Public Records Act.<sup>1</sup> Trustee Thomas McClanahan filed an answer on behalf of the township. In accordance with Indiana Code § 5-14-5-10, I issue the following opinion to the formal complaint received by the Office of the Public Access Counselor on September 21, 2020.

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<sup>1</sup> Ind. Code § 5-14-3-1-10.

## **BACKGROUND**

This case involves a dispute over access to unredacted versions of German Township's financial reports.

Beginning in February 2019, German Township board member Doloris Schosker (Complainant) received copies of the township's financial reports that did not include information detailing to whom each check to been written. Schosker contends that German Township Trustee Thomas McClanahan only provided the board reports that included check numbers, dates the checks were written, and the amount.

Schosker asserts that when she asked Trustee McClanahan about the missing information, he informed her that if she or anyone else wished to review a more detailed copy of any of the township's financial reports they would need to go to the Trustee's office in person. Schosker maintains that the Trustee also indicated that copies of the unredacted reports would not be available for purchase and requesters could not take photos of the reports. Schosker argues that this change in policy is inappropriate and a violation of the Access to Public Records Act (APRA).

As a result, Schosker filed a formal complaint with this office.

In response, Trustee McClanahan argues that his decision to redact some part of the township's financial reports does not constitute a violation of the ARPA. He maintains that by allowing members of the public to come to the Trustee's office to view the documents he is properly maintaining transparency as required by law. Moreover, he maintains

that it is his decision to restrict the release of certain pieces of information. The Trustee contends that before he chose to redact the financial reports, there were times when reports that had not yet been approved by the board were given to members of the public, which ultimately caused significant confusion and disrupted the subsequent board meeting. Therefore, copies are only provided to the board members during board meetings and not beforehand.

Finally, Trustee McClanahan defends his decision to redact the names of check recipients, by asserting that he has “an obligation to our vendors and staff to protect their private information and that this information is of no importance to the execution of the duties of the board.”

## ANALYSIS

### 1. The Access to Public Records Act

The Access to Public Records Act (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.” Ind. Code § 5-14-3-1. The German Township Trustee’s Office is a public agency for purposes of APRA; and therefore, subject to its requirements. *See* Ind. Code § 5-14-3-2(q). As a result, unless an exception applies, any person has the right to inspect and copy Trustee’s public records during regular business hours. Ind. Code § 5-14-3-3(a).

Indeed, APRA contains both mandatory exemptions and discretionary exceptions to the general rule of disclosure. *See* Ind. Code § 5-14-3-4(a)—(b).

## **2. Township records**

The crux of this dispute is whether the German Township Trustee has authority under APRA to withhold from disclosure certain information contained in the township's financial records from township board members and the public.

As an initial matter, this office is often reluctant to field complaints between public officials. These disputes often serve to erode the public's trust and have an unintentional consequence of casting doubt on a civil servant's job performance. From time to time, however, a scenario will present itself lending to an opportunity to provide a back-to-basics overview of the law and how it should operate in reality.

This is one of those occasions.

The law is clear that a member of the public, including another public official, may request to inspect or copy a public record:

(a) Any person may inspect and copy the public records of any public agency during the regular business hours of the agency...

(b) A public agency may not deny or interfere with the exercise of the right stated in subsection (a).

Within a reasonable time after the request is received by the agency, the public agency shall either:

(1) provide the requested copies to the person making the request; or

(2) allow the person to make copies:

(A) on the agency's equipment; or

(B) on the person's own equipment.

Ind. Code § 5-14-3-3. While this provision is not absolute – there are slight exceptions to procedure – the disclosure of basic public records such as budgets, invoices, and financial records of a public entity are the mainstays of government transparency.

Plainly enough, the public has the unequivocal right to inspect *and copy* records it seeks to scrutinize. It is not merely enough for an office holder to open the doors to his office without also providing a means to send a requester away with copies, either on the agencies copier, or their own device.

The only exceptions to disclosure for a township, easily withheld or redacted, would be township assistance applications or confidential financial information. In the context of a township, names of township assistance recipients and vendors are disclosable as are the amounts they receive. The only confidential information would be private account numbers, personal income amounts, internal proprietary vendor info, and the like.

Insofar as information sharing between public officials is concerned, a township trustee is not the exclusive record holder for the township. The advisory board is also designated as a statutory record holder and is privy to all the information a trustee has in their possession in order to scrutinize the annual financial report. *See* Ind. Code § 36-6-6-9.

It also bears mentioning that any obligation a trustee has to keep a record or piece of information confidential transfers

to a board member to keep private as well. *See* Ind. Code § 5-14-3-6.5.

In sum, it would behoove both parties to heed these guidelines and recommendations. A trustee need not be territorial about the information in their office and provide the information to those who seek it, unless an exception applies. At the same time, a township board member should be mindful of the operational considerations of a trustee and be a good steward of sensitive or unfinalized material.

## **RECOMMENDATION**

Based on the foregoing, it is the opinion of this office that both the German Township Trustee and the Township Board heed the guidelines herein and work together using transparency and good governance for the benefit of the public.

A handwritten signature in black ink, appearing to read 'L. Britt', with a stylized flourish at the end.

**Luke H. Britt**  
**Public Access Counselor**