

---

## OPINION OF THE PUBLIC ACCESS COUNSELOR

---

SCOTT MARBACH,  
*Complainant,*

v.

UNION TOWNSHIP TRUSTEE,  
*Respondent.*

---

Formal Complaint No.  
24-FC-62

---

Luke H. Britt  
Public Access Counselor

---

BRITT, opinion of the counselor:

This advisory opinion is in response to the formal complaint alleging the Union Township Trustee violated the Access to Public Records Act.<sup>1</sup> Trustee Nathan Mihm filed an answer on behalf of the agency. 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 August 6, 2024.

---

<sup>1</sup> Ind. Code § 5-14-3-1-10.

## **BACKGROUND**

This case involves a dispute over access to records related township financial information.

On July 11, 2024, Scott Marbach, a member of the Union Township Advisory Board, submitted a request to the Trustee Nathan Mihm for a copy of various financial records of the Township. Marbach's request was signed for, but not acknowledged or received.

He filed his complaint on July 22. Mihm was asked to respond to the complaint on August 6.

Mihm responded on August 8 with the following:

The request form that was sent to my office is not from our office. It is a fraudulent form that Scott has made him or copied from another department. He has requested documents 2 different times and each time the forms have been different. It is my understanding that he should come to my office to get the request form. The last one he sent me has the number crossed out and it is payable to Adams County. Different size font then the first one he sent to the office. This office is a part time office and there is only me here. I work 12-15 hours a day. He is also asking for over a 100 different documents. He did not state on the form if he wanted a copy of them mailed, emailed, or wanted to see them in person. We go over all the bills and everything he is asking for at the year end meeting like we do every year. He

complained the last time he requested documents because it took me 5 weeks to get them all together and sent to him. As you can tell it's 8pm 2 days late before I even had time to read my email.

It is difficult to understand what any of that actually means related to Marbach's complaint.

As of the writing of this opinion, it is unclear whether Marbach ever received his documents.

## 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 Union 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 the Trustee's public records during regular business hours. Ind. Code § 5-14-3-3(a).

Indeed, APRA contains mandatory exemptions and discretionary exceptions to the general rule of disclosure. *See* Ind. Code § 5-14-3-4(a) to -(b). This case involves the applicability of APRA's investigatory records exception.

## **2. Township records**

A township trustee is statutorily obligated to keep township records open for inspection under Indiana law. See Ind. Code § 36-6-4-3(3). Notably, subsections (5) and (6) of that statute also require a trustee to receive and pay out township funds; and to examine and settle all accounts and demands chargeable against the township.

Therefore, there can be no question that the financial, business, and operational records of the township's administrative duties should be open to anyone who cares to inspect them.

This is especially true when an advisory board member seeks to inspect these records. The Advisory Board has a statutory interest in these records and should be freely available to them and not even have to send a public records request, much less on a bespoke form.

What is more, the Trustee was, or is, under both administrative and law enforcement investigation for handling of finances. All the more reason to be transparent with transactional documents.

## **CONCLUSION**

Based on the foregoing, it is the opinion of this office a township trustee cannot simply ignore a public records request from an advisory board member and remain in compliance with the law. Accordingly, it is the opinion of this office that the Union Township Trustee violated the Access to Public Records Act.

A handwritten signature in black ink, appearing to read 'LH Britt', is positioned above the printed name.

Luke H. Britt  
Public Access Counselor

Issued: October 30, 2024