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## OPINION OF THE PUBLIC ACCESS COUNSELOR

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DAVID DOEPPING,  
*Complainant,*

v.

NOBLE TOWNSHIP FIRE DEPARTMENT,  
*Respondent.*

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Formal Complaint No.  
24-FC-72

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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 the formal complaint alleging the Noble Township Fire Department violated the Access to Public Records Act.<sup>1</sup> Chief Scott Klemz 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 September 23, 2024.

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<sup>1</sup> Ind. Code § 5-14-3-1-10.

## **BACKGROUND**

This case involves a dispute over access to records related to a volunteer fire department.

On August 8, 2024, Complainant David Doepping, the Noble Township Trustee, submitted a public records request to the Noble Township Volunteer Fire Department (NTVFD) seeking a series of records related to the operation of the Department.

After not receiving the entirety of his request in a timely fashion, he filed his complaint on September 23. Chief Scott Klemz was asked to respond to the complaint on October 10.

NTVFD argues it is not a public agency based on Indiana code section 5-11-1-9(b), which is the formula used for the State Board of Accounts (SBOA) to determine whether non-profit organizations are subject to audit. If an SBOA audit is conducted, this triggers the entity's responsibilities under the access laws.

## **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. As will be discussed below, the Noble Township Fire Department 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 Department 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).

## **2. Volunteer fire departments and the access laws**

The NTVFD correctly cites Indiana code section 5-11-1-(b) as evidence they are not subject to the State Board of Accounts audit. The monetary formula is not met.

Even still, the analysis does not stop there. That is but one of the channels by which a non-profit entity can be considered a public agency.

To wit, under Indiana Code 5-14-3-2(q)(1) public agency means “Any board, commission, department, division, bureau, committee, agency, office, instrumentality, or authority, by whatever name designated, exercising any part of the executive, administrative, judicial, or legislative power of the state.”

In *Ayres v. Indian Heights Volunteer Fire Department*, 493 N.E.2d 1229 (Ind. 1986), the Indiana Supreme Court held in construing the Indiana Tort Claim Act, that a volunteer fire department of a township is an instrumentality of local government and was entitled to immunity “regardless of which of the five ways the township arranges to provide fire service under Indiana law.”

The Supreme Court held in *Ayres* that the establishment of fire departments, including volunteer fire departments under Indiana Code 36-8-12 “recognized the need for local governments to provide for fire protection in their communities.” *Id.* at 1237.

When private individuals or groups are endowed by the state with powers or functions governmental in nature, they become agencies or instrumentalities of the state and are subject to the laws and statutes affecting governmental agencies and corporations.

Because the NTVFD is performing a government function, it is a public agency subject to Public Access Laws. This has been affirmed by prior Public Access Counselors as far back as 2009. See *Opinion of the Public Access Counselor 09-FC-134*.

In *Veolia Water Indianapolis, LLC v. Nat'l Trust Ins. Co.*, 3 N.E.3d 1 (Ind. 2014), the Supreme Court reiterated its holding in *Ayres* that fire services are essential governmental services. It distinguished the defendant entity by opining that a for-profit, autonomous, wholly private entity is bound to the city only by contract may not always be considered to be an instrumentality of the state. It may, however, be liable under the Tort Claims Act for failure to provide an element of outsourced essential services.

Additionally, volunteer fire departments have been specifically contemplated by the legislature in the Indiana Tort Claim Act. Indiana Code § 34-13-3-22 which states a volunteer fire department that is acting under a contract with a unit or a fire protection district shall be treated as a political subdivision under the ITCA.

When a third-party private entity steps in the shoes of a public agency as a ‘state actor’, it can become custodian of public records when it creates documents for the government’s benefit. See *Knightstown Banner v. Town of Knightstown*, 838 N.E.2d 1127 (Ind. Ct. App. 2005). The Fire Department is considered an instrumentality of the state because it is a not-for-profit agency empowered by Indiana law to provide fire protection services.

Here, although the NTVFD does not receive the requisite public monies to be considered a public agency by that method alone, the exercise of firefighting efforts meets the statute’s functional equivalency test.

### CONCLUSION

Based on the foregoing, it is the opinion of this office and the courts that volunteer fire departments are public agencies. As such, the NTVFD should provide the records requested.



Luke H. Britt  
Public Access Counselor

Issued: November 30, 2024