



STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

PUBLIC ACCESS COUNSELOR
HEATHER NEAL

Indiana Government Center South
402 West Washington Street, Room W460
Indianapolis, Indiana 46204-2745
Telephone: (317)233-9435
Fax: (317)233-3091
1-800-228-6013
www.IN.gov/pac

June 18, 2009

Sharon and Gary J. Earl
3240 North 350 East
Rockville, Indiana 47872

Re: Formal Complaint 09-FC-134; Alleged Violation of the Access to Public Records Act by the Marshall Volunteer Fire Department

Dear Mr. and Mrs. Earl:

This advisory opinion is in response to your formal complaint alleging the Marshall Volunteer Fire Department ("Department") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by denying you access to records. It is my opinion the Department is a public agency for the purposes of the APRA and as such must provide you copies of requested public records unless the records are excepted from disclosure pursuant to the APRA.

BACKGROUND

You allege that on May 18, 2009 sent to the President of the Department's Board a request for access to records. You further allege that the Board President, Larry Harmon, contacted you approximately three days later and indicated he had received the requested and needed to consult with his attorney. You further allege that on May 26 you telephoned Mr. Harmon and you were told by his wife that the request would not be honored because the Department's attorney advised that the Department was not required to comply with the public access laws. You filed the present complaint on May 28 (postmarked May 27).

My office sent a copy of the complaint to the Department and invited the Department to respond. To date my office has not received a response to the complaint.

ANALYSIS

The public policy of the APRA states, "[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." I.C. § 5-14-3-1. To that end, a person may inspect and copy the public records of any public

agency during the regular business hours of the agency, unless the records are excepted from disclosure. I.C. § 5-14-3-3(a).

Here, the Department has asserted to you that it is not a public agency. The issue of whether a volunteer fire department is a public agency for the purpose of the public access laws (the APRA as well as the Open Door Law) has previously been addressed by this office. In two informal advisory opinions issued by my predecessor and available via my office's website at www.in.gov/pac, my predecessor addressed the issue. In those opinions, one issued February 15, 2005 and one issued September 13, 2006, she opined that when a volunteer fire department, in providing fire services, exercises a portion of the executive power of the political subdivision, it is a public agency for the purposes of the public access laws.

Counselor Davis based her opinion on *Ayres v. Indian Heights Volunteer Fire Department*, 493 N.E.2d 1229 (Ind. 1986), wherein the Indiana Supreme Court, in construing the Indiana Tort Claim Act, held that a volunteer fire department of a township is an instrumentality of local government regardless of which of the five ways the township arranges to provide fire service under Indiana law. I have enclosed copies of both of Counselor Davis' opinions for your reference. I agree with the conclusion reached by Counselor Davis. Based on my review of the copy of the Fire Protection Contract between the Marshall Volunteer Fire Department and Parke County, it is my opinion that the reasoning in those opinions applies here as well, since the Department does provide fire services. As such, it is my opinion the Marshall Volunteer Fire Department is a public agency for the purposes of the APRA.

CONCLUSION

For the foregoing reasons, it is my opinion the Department is a public agency for the purposes of the APRA and as such must provide you copies of requested public records unless the records are excepted from disclosure pursuant to the APRA.

Best regards,



Heather Willis Neal
Public Access Counselor

Cc: Larry Harmon, Marshall Volunteer Fire Department