



STATE OF INDIANA

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March 25, 2009

Dora Brown
6429 North Kivett Road
Monrovia, Indiana 46157

Ben Kindle
4972 West Sims Lane
Monrovia, Indiana 46157

*Re: Formal Complaints 09-FC-70 and 09-FC-72; Alleged Violation of the
Access to Public Records Act by the Gregg Township Fire Department*

Dear Ms. Brown and Mr. Kindle:

This advisory opinion is in response to your formal complaint alleging the Gregg Township Fire Department ("Department") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by denying you access to records. Because your complaints are against the same agency and concern the same records, I have consolidated the complaints and issue this one response. It is my opinion the Department violated the APRA if the office received your request and did not respond to it.

BACKGROUND

You allege that on February 3, 2009 you sent to the Department a request for access to records, namely bank statements and payroll records. Mr. Kindle's complaint also makes allegations about answers he has received to questions posed to a part-time employee of the Department and about telephone calls he has made to her.

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. A copy of the response of Claudia Hayes is enclosed.

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. The Department is clearly a public agency for the purposes of the APRA. I.C. §

5-14-3-2(m). Accordingly, any person has the right to inspect and copy the public records of the Department during regular business hours unless the public records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. I.C. § 5-14-3-3(a).

A request for records may be oral or written. I.C. §§ 5-14-3-3(a), 5-14-3-9(c). If the request is delivered by mail or facsimile and the agency does not respond to the request within seven days of receipt, the request is deemed denied. I.C. § 5-14-3-9(b). If the request is delivered in person and the agency does not respond within twenty-four hours of receipt, the request is deemed denied. I.C. § 5-14-3-9(a).

A response could be an acknowledgement that the request has been received and information regarding how or when the agency intends to comply. There are no prescribed timeframes when the records must be produced by a public agency. A public agency is required to regulate any material interference with the regular discharge of the functions or duties of the public agency or public employees. I.C. § 5-14-3-7(a). However, section 7 does not operate to deny to any person the rights secured by section 3 of the Access to Public Records Act. I.C. § 5-14-3-7(c).

Here, you allege you made the request on February 3. As of March 2, you had received no response. If you mailed your request, the Department had the duty to respond to the request within seven days of receipt. I.C. § 5-14-3-9(b). If you personally delivered your request, the Department had the duty to respond to the request within twenty-four hours of receipt. I.C. § 5-14-3-9(a). If the Department failed to do so, the agency violated the APRA.

Regarding your allegations about Ms. Hayes not answering questions, please be mindful of the requirements of the APRA. Nothing in the APRA requires an agency to answer inquiries. Instead, the APRA requires an agency to provide access to records, when the request identifies with reasonable particularity the records being requested. *See* I.C. § 5-14-3-3(a). I would also note that you should direct requests directly to the agency and not to Ms. Hayes, as she has resigned her position with the township.

CONCLUSION

For the foregoing reasons, it is my opinion the Department violated the APRA if the office received your request and did not respond to it.

Best regards,



Heather Willis Neal
Public Access Counselor

Cc: Chief David Reese, Gregg Township Fire Department