



# STATE OF INDIANA

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November 15, 2011

Dora P. Brown  
6429 N. Kivett Road  
Monrovia, Indiana 46157

*Re: Formal Complaint 11-FC-272; Alleged Violation of the Access to Public Records Act by the Gregg Township Trustee.*

Dear Ms. Brown:

This advisory opinion is in response to your formal complaint alleging the Gregg Township Trustee ("Trustee") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Stephen Buschmann, Attorney, responded on behalf of the Trustee. His response is enclosed for your reference.

## BACKGROUND

In your formal complaint, you allege that on October 20, 2011, you submitted an oral request for a signed copy of the 2012 Budget at the conclusion of the Budget Adoption meeting. You further allege that the Trustee denied your request and provided that "a taxpayer had a copy and you could get it from them." You again inquired regarding a signed budget, as the board members were signing the budget at that particular moment. You allege that the Trustee again denied your request and provided that you could receive a copy from the Auditor. You had also intended to submit a records request for the Township's bank statement from July 2010 through September 2011, but you could not give it to the Trustee because the meeting had been adjourned.

In response to your formal complaint, the Trustee disputed your factual allegations. On October 20, 2011 at 11:00 a.m., the Township Board held a public meeting to adopt the 2012 budget and approve an additional appropriation. Proper public notice was provided for the meeting. The meeting was called to order at 11:00 a.m. No members of the public were present. As the Board had previously held a public hearing to discuss the budget and each member had an opportunity to individually review the budget, a motion was made and seconded to adopt the budget. The motion was unanimously approved. Thereafter, the additional appropriation was unanimously approved. There was no further business to come before the Board, as such the meeting was adjourned at 11:05 a.m. The Board members then proceeded to sign the required

number of copies of the budget so that the Trustee could comply with statutory filing requirements.

You arrived in the room where the meeting was held at 11:07 a.m. Due to the extensive history between you and the Township, the Trustee and the Board confirmed the time of your arrival. You were informed the meeting was adjourned. You then requested a copy of the signed budget. An unsigned copy was immediately made available, but you requested a signed copy. The Trustee informed you that no extra copies of the signed budget were available at the time, but you could request a copy from the Auditor after copies had been made. You left the room without further discussion and a signed copy was mailed to you by the Trustee.

As to the request for bank statements, you did not submit or request copies of the Trustee on October 20, 2011. However, copies of those bank statements were mailed to you on November 2, 2011 after the Trustee received a copy of your formal complaint filed with the Public Access Counselor. Subsequent to filing your formal complaint, you provided further correspondence to the Public Access Counselor's Office alleging that the bank statements that you did receive were not complete. Mr. Buschmann responded to your additional concerns and supplemented the disclosure.

#### ANALYSIS

The public policy of the 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." *See* I.C. § 5-14-3-1. The Trustee is a public agency for the purposes of the APRA. *See* I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy the Trustee's public records during regular business hours unless the records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. *See* I.C. § 5-14-3-3(a).

A request for records may be oral or written. *See* I.C. § 5-14-3-3(a); § 5-14-3-9(c). If the request is delivered in person and the agency does not respond within 24 hours, the request is deemed denied. *See* I.C. § 5-14-3-9(a). If the request is delivered by mail or facsimile and the agency does not respond to the request within seven (7) days of receipt, the request is deemed denied. *See* I.C. § 5-14-3-9(b). Under the APRA, when a request is made in writing and the agency denies the request, the agency must deny the request in writing and include a statement of the specific exemption or exemptions authorizing the withholding of all or part of the record and the name and title or position of the person responsible for the denial. *See* I.C. § 5-14-3-9(c). A response from the public agency could be an acknowledgement that the request has been received and information regarding how or when the agency intends to comply. Here, the Trustee responded to your oral request for a signed copy of the budget within the timelines provided by the APRA.

Nothing in the APRA indicates that an agency's failure to provide a requester with "instant access" to requested records constitutes a denial of access. *See Opinion of the Public Access Counselor 09-FC-192*. "It is the responsibility of the public agency to respond to requests for access to public records within a specified time period. The APRA does not set any time periods for producing public records, merely for responding to the request." *See Opinion of the Public Access Counselor 02-FC-09*. Here, the Trustee provided that at the time of your request, it did not have available a signed copy to provide to you as the Board was literally signing copies of the budget at that time. A copy of an unsigned budget was made available to you, which you declined. You were then informed that the Auditor would have copies available later that day. Thereafter, the Trustee sent to you a copy of the signed budget by certified mail. It is my opinion that the Trustee did not act contrary to the APRA in responding to your request for a signed copy of the budget.

In regards to your desire to submit a request for Township bank statements, the Trustee provided that it never received your request. You provide that you were unable to submit your request due to the meeting had been adjourned. Regardless, after receiving a copy of your formal complaint, the Trustee sent you a copy of the bank statements via certified mail and later supplemented its response. As the Trustee has now provided all records responsive to your request, I trust this is in satisfaction of your complaint.

#### CONCLUSION

For the foregoing reasons, it is my opinion that the Trustee did not violate the APRA.

Best regards,

A handwritten signature in black ink, appearing to read "Joe Hoage". The signature is stylized with a large initial "J" and "H".

Joseph B. Hoage  
Public Access Counselor

cc: Stephen Buschmann