



STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

PUBLIC ACCESS COUNSELOR
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September 27, 2007

Richard Hancock
5400 E 300 S
Whitestown, Indiana 46075

Re: Formal Complaint 07-FC-257; Alleged Violation of the Access to Public Records Act by the Worth Township Trustee of Boone County

Dear Mr. Hancock:

This is in response to your formal complaint alleging the Worth Township Trustee's Office of Boone County ("Trustee") violated the Access to Public Records Act ("APRA") (Ind. Code §5-14-3) by denying you access to records when you refused to sign an acknowledgement of receipt of the records. A copy of the Trustee's response is enclosed for your reference. I find that the Trustee violated the Access to Public Records Act by requiring a signed acknowledgment as a condition of production of records and by denying you access to a copy of the acknowledgment you signed.

BACKGROUND

In your complaint you allege you personally appeared at the Trustee's office on August 27, 2007 and requested a copy of the 2008 proposed budget. You allege that while the Trustee originally refused your requested, the Trustee later indicated you could obtain a copy of the proposed budget with a "draft" indication on each page. The Trustee asked you to complete a form with spaces for your name, address, township, and records requested. The form also required your signature indicating you had received the records. When you altered that statement, the Trustee refused access to the requested records. When you asked for a copy of the form you had just completed, you were denied that request as well. You filed your complaint with my office on August 28.

You sent an electronic mail message to my office on September 9 indicating the Trustee had mailed the requested records to your home but that you did not wish to withdraw your complaint.

The Trustee submitted a brief response to your complaint by letter dated September 17. In his response, the Trustee indicated you appeared in person to request a copy of the proposed budget on August 27 and the Trustee mailed the records on September 5.

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." Ind. Code §5-14-3-1. The Trustee is clearly a public agency for the purposes of the APRA. I.C. §5-14-3-2. Accordingly, any person has the right to inspect and copy the public records of the Trustee 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 "public record" means any writing, paper, report, study, map, photograph, book, card, tape recording or other material that is created, received, retained, maintained or filed by or with a public agency. I.C. §5-14-3-2.

A request for records may be oral or written, and the agency has the discretion to require the request in writing on or in a form prescribed by the agency. I.C. §5-14-3-3(a); §5-14-3-9(c).

Regarding your allegation you were required as a condition of receiving the records to sign an acknowledgment, a public agency may require a request for records to be made in writing on a form prescribed by the agency. I.C. §5-14-3-3(a). But a public agency may not deny or interfere with the exercise of the right to records under the APRA. I.C. §5-14-3-3(b). Although it is true that no provision of the APRA specifically prohibits a public agency from requiring a person to sign an acknowledgement, there is no provision permitting this practice as a condition for receiving records. Because the public policy of the APRA places the burden of proof for the denial of a record on the public agency, the public agency would have to sustain its denial of records when a person refuses to sign the acknowledgement. In the absence of a specific statute allowing such a condition to be placed on the receipt of records, the agency would be unable to sustain the denial. *See* I.C. §5-14-3-1. The agency violated the Access to Public Records Act if the acknowledgement was required in order to receive the records. *Opinion of the Public Access Counselor 06-FC-210.*

Nothing in the APRA prohibits a public agency from asking a person to sign an acknowledgement, but the public agency may not withhold the records if the person refuses to sign the acknowledgement. If the public agency needs to document that records were made available or disclosed on a certain date and time, the agency is free to make a contemporaneous notation in its files that should meet the public agency's need for verification at a later date. *Opinion of the Public Access Counselor 06-FC-210.* While an agency may prescribe a form for the request of records, an agency may not deny access to records because the requester refuses to sign an acknowledgement indicating he or she has received the records.

Regarding the Trustee's refusal to provide you a copy of the form you signed, it is my opinion this is also a violation of the APRA. Unless an exception in section 4 applies, any record

filed with a public agency is a public record. I.C. §5-14-3-3; I.C. §5-14-3-2. The Trustee had no reason for denying you access to the form you completed to request the records.

CONCLUSION

For the foregoing reasons, I find that the Trustee violated the Access to Public Records Act by requiring a signed acknowledgment as a condition of production of records and by denying you access to a copy of the acknowledgment you signed.

Best regards,

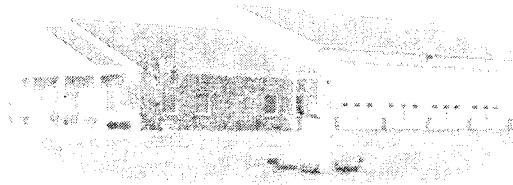


Heather Willis Neal
Public Access Counselor

cc: Robert Guest, Worth Township Trustee

WORTH TOWNSHIP TRUSTEE

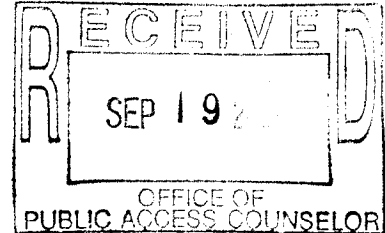
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September 17, 2007

Response to:
Public Access Counselor
Heather Neal
Indiana Government Center South
402 West Washington Street, Room W460
Indianapolis, IN. 46204
Formal Complaint 07-FC-257



1. Petitioner Richard M. Hancock requested in person on August 27th 2007 public access to a copy of the 2008 Worth Township proposed budget.
2. The office of the Worth Township Trustee fulfilled this request by mail to Mr. Hancock on September 5th, 2007.

Robert L. Guest
Worth Township Trustee