



STATE OF INDIANA

MICHAEL R. PENCE, Governor

**PUBLIC ACCESS COUNSELOR
LUKE H. BRITT**

Indiana Government Center South
402 West Washington Street, Room W470
Indianapolis, Indiana 46204-2745
Telephone: (317)233-9435
Fax: (317)233-3091
1-800-228-6013
www.IN.gov/pac

October 10, 2013

Mr. Charles J. Davis, Sr. - #930610
Wabash Valley Correctional Facility
6908 S. Old U.S. Highway 41
Carlisle, IN 47838

Re: Formal Complaint 13-FC-268; Alleged Violation of the Access to Public Records Act by the Edinburgh Town Council

Dear Mr. Davis,

This advisory opinion is in response to your formal complaint alleging the Edinburgh Town Council, ("Town") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et. seq.* Mr. Dustin Huddleston Esq., of the Huddleston and Huddleston Law Offices, responded on behalf of the Town. His response is enclosed for your reference. Pursuant to Ind. Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on September 10, 2013.

BACKGROUND

Your complaint alleges the Edinburgh Town Council violated the Access to Public Records Act by denying your request in violation of Ind. Code § 5-14-3-3(b). You allege that on or about June 7, 2013, you served upon the Town a Request for Access to Public Record received by the town on August 21, 2013. You requested the following information:

All records relating to 911 Call #E10090358 received at 8:56:09 on 9-16-10 including transcript [sic] of the Call or the recording, Interaction between responding Officer and Dispatcher Matthew Payne concerning the report of Suspicious person and all other records concerning Incident Report E10090337 and Call # E10090358.

The Town issued a timely response to you on June 14, 2013 advising you the records were being compiled and that there would be associated fees for copies. On June 26, 2013, the Town advised you of the particular fees and that the records had been compiled.

On August 30, 2013, after receiving the majority of the paperwork and an electronic copy of the 911 call referenced in your complaint, you alleged the original 911 call placed at 8:56:09 on September 16, 2010 was not included on the electronic format provided to you. The Town again issued a timely response on September 6, 2013, affirming all of the records in regard to your request had been provided to you.

On September 10, 2013, you filed a formal request and asked the Public Access Counselor to compare the 911 call electronic recordings in question contained on compact disc format provided to you and to me by Mr. Huddleston.

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 Ind. Code § 5-14-3-1. The Edinburgh Town Council is a public agency for the purposes of the APRA. See Ind. Code § 5-14-3-2(n)(1). Accordingly, any person has the right to inspect and copy the Town’s public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. See Ind. Code § 5-14- 3-3(a).

A request for records may be oral or written. See Ind. Code § 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 Ind. Code § 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 Ind. Code § 5-14-3-9(b). A response from the public agency could be an acknowledgement the request has been received and information regarding how or when the agency intends to comply.

The Public Access Counselor is not a finder of fact; however, I have reviewed both CDs of the calls. Both are identical. They do not appear to contain the 911 Call #E10090358 received at 8:56:09 on 9-16-10. The Town has provided you a copy of the log created at that particular date and time. Ind. Code § 5-14-3-5(c) holds an agency shall maintain a daily log or record that lists suspected crimes, accidents, or complaints, and the following information shall be made available for inspection and copying: (1) The time, substance, and location of all complaints or requests for assistance received by the agency. (2) The time and nature of the agency's response to all complaints or requests for assistance.

The APRA does not mandate logs created by an agency must be recorded. Even if there is another statute or ordinance that requires law enforcement to maintain recordings of 911 calls, the Town has stated all of the records in their possession have been supplied to you. The custodian of any additional records may very well be the Edinburgh Police Department or the Johnson County Sheriff’s Department. If the records exist, then they are available to you. If not, then an Agency cannot be expected to create one.

Although the burden is on the public agency to prove the non-existence of a record, that is a matter for the courts. See Ind. Code § 5-14-3-4.4(f). In the absence of proof the records do indeed exist, I cannot determine a violation has occurred.

CONCLUSION

For the foregoing reasons, it is the Opinion of the Office of the Public Access Counselor the Edinburgh Town Council did not violate the Access to Public Records Act.

Regards,

A handwritten signature in black ink, appearing to read 'LH Britt', with a long horizontal flourish extending to the left.

Luke H. Britt
Public Access Counselor

cc: Dustin Huddleston, Esq.