



STATE OF INDIANA

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March 3, 2014

Mr. Jim Brugh, Esq.
1315 East Market St.
Logansport, IN 46947

Re: Formal Complaint 14-FC-13; Alleged Violation of the Access to Public Records Act ("APRA") by the Mayor of Logansport and the Logansport City Council

Dear Mr. Brugh,

Thank you for your correspondence received January 30, 2014. While I appreciate your zeal for access and expectation of timeliness in regard to APRA issues, I am declining to issue an Advisory Opinion pursuant to your formal complaint on several grounds.

First, the timeliness of your complaint does not make it ripe for review. You made your request on January 23, 2014 and filed your complaint on January 30, 2014, a mere five business days after making a request seeking records. You have conceded the Mayor and the Council acknowledged your request in a timely manner (within 24 hours), yet your dissatisfaction lies with the proposed timeline for production of those records. Your contention appears to be the February 20, 2014 date the Agencies have set forth for production. At no point was your access to records denied. You have referenced *Opinion of the Public Access Counselor 13-FC-176*, which states, "nothing in the APRA indicates that a public agency's failure to provide "instant access" to the requested records constitutes a denial of access." I would note the Opinion in 13-FC-176 did not find a violation on the part of Logansport either with regard to somewhat similar factual circumstances. In any case, it is likely you already have the records you were seeking.

To expect any Agency to search for, gather, retrieve and produce records in less than thirty days is not a lofty expectation *per se*, however, one cannot reasonably assume records containing attorney-client services do not necessarily contain non-disclosable material which must be first redacted. You however, imposed a timeframe upon the agency to produce records within one week. The failure by the city to meet your ultimatum is not violative of the Access to Public Records Act. No violation has yet occurred. The City has a reasonable timeframe to produce the records. I do not find the 30-calendar-day self-imposed deadline by the City to be unreasonable. Ind. Code § 5-14-3-7 states a public agency shall regulate any material interference with the regular

discharge of the functions or duties of the public agency or public employees. While I will not presume to estimate how much time and effort it would take to produce the records you seek, for the Agencies in question to make that determination is at their discretion. Although they would have the burden of demonstrating reasonableness, it would be premature to compel them to do so at this point.

Moreover, it has come to my attention these matters are under consideration in litigation out of Cass County Superior Court to determine attorneys' fees (Case No. 09D2-1303-PL-0011). The Public Access Counselor is prohibited from issuing an advisory opinion concerning a specific matter with respect to which a lawsuit has been filed under IC 5-14-1.5 or IC 5-14-3. Access to the information you seek is under the jurisdiction of the trial court and to comment on potential discovery issues in that forum would be inappropriate for this Office and would suggest an attempt to usurp the judiciary's authority while the litigation is still pending.

Regards,

A handwritten signature in black ink, appearing to read 'LH Britt', with a long, sweeping underline that extends to the left and then curves back under the signature.

Luke H. Britt
Public Access Counselor