



# STATE OF INDIANA

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February 3, 2015

Mr. Jim J. Brugh, Esq.  
204 Fourth St.  
Logansport, IN 46947

*Re: Formal Complaint 14-FC-319; Alleged Violation(s) of the Indiana Access to Public Records Act by the Mayor of Logansport and the President of the Logansport Redevelopment Commission*

Dear Mr. Brugh,

This advisory opinion is in response to your formal complaint alleging the Mayor of Logansport and the President of the Logansport Redevelopment Commission (“City”), violated the Indiana Access to Public Records Act (“APRA”), Ind. Code § 5-14-3-1 *et seq.* The City has responded via attorney Mr. John Molitor, Esq. His response is enclosed for your review. 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 December 19, 2014.

## **BACKGROUND**

Your formal complaint dated December 19, 2014, alleges the Mayor of Logansport and the President of the Logansport Redevelopment Commission violated the public records act by not releasing records to you in a timely manner.

On or about September 10, 2014, you made a public records request to the City for several sets of documents. The Mayor and the President of the Redevelopment Commission responded the same day indicating the records would be available by December 9, 2014. You followed up on December 9, 2014 inquiring about the records; however, they were not ready. After reaching out to the attorney for the city, you learned that a new deadline had been set for the end of January 2015 to produce the records.

The City responded by arguing that your request, while reasonably particular, was voluminous and considerable time was needed to curate the records. Additionally, some contained attorney-client communication and would need to be scrutinized closely before release, hence the delay.

## 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 Mayor’s Office of Logansport and the Logansport Redevelopment Commission are public agencies 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 City’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).

I regularly caution agencies on setting a deadline for production of public records pursuant to a request. This practice not only could be construed as arbitrary, but it also sets up expectations which may or may not be attainable by an agency.

After the acknowledgement of the request, the City would have a “reasonable time” to produce the records you seek. See Ind. Code § 5-14-3-3(b). Your request appears voluminous, but not so much so the City could not have updated you as to the status of their progress. Moreover, I have held several times in the past the best way to produce records from a voluminous request is in a piecemeal manner and not to wait until all records are compiled to produce them. Furthermore, I have encouraged agencies to periodically update a requestor with a status report on the progress of their request. Although not required by the APRA, it is good practice to do so.

I have no way of knowing if the records would really take four months to produce. Without inspecting the totality of the documentation personally, it would be difficult to make a conclusive determination. It is my understanding that as of January 27, 2015, a partial portion of the documentation has been release to you. It is my expectation the City release the remainder to you in an expeditious fashion.

While I decline to state a violation has definitively taken place, I do believe the City has acted contrary to the spirit of the Access to Public Records Act by not providing you with any information until after your complaint was filed. Furthermore, I would sincerely hope in the future, the City treats public records requests according to the guidance set forth in this Opinion.

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: Mr. John Molitor, Esq.