



STATE OF INDIANA

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July 18, 2016

Mr. Thomas A. Black
3515 Garfield Avenue
Highland, Indiana 46322

Re: Formal Complaint 16-FC-147; Alleged Violation of the Access to Public Records Act by the Highland Redevelopment Commission

Dear Mr. Black:

This advisory opinion is in response to your formal complaint alleging the Highland Redevelopment Commission (“Commission”) violated the Access to Public Records Act (“APRA”), Indiana Code § 5-14-3-1 et. seq. The Commission has responded via Ms. Petro, Highland Redevelopment Director. Her response is enclosed for your review. Pursuant to Indiana Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on June 23, 2016.

BACKGROUND

Your complaint dated June 23, 2016 alleges the Commission violated the Access to Public Records Act by failing to provide records you requested after a meeting held with Ms. Petro.

On May 16, 2016 you made a written request to the Commission for “all document[s] and emails relate[d] to the rehabilitation of the Town Theatre, especially architectural reports, reconstruction estimates.” Your request was acknowledged on May 17, 2016, at which time it was requested that you schedule a meeting with Ms. Petro to review some of the information you requested and to ascertain greater specificity of the records you sought to review.

On May 24, 2016 you met with Ms. Petro. During this meeting, you discussed the Town Theatre project from the beginning up to the current date. You were also able to review the structural engineer’s renderings of the walls, the cost to shore them, and the first architect’s projected cost to rehab the theatre. Additionally, Ms. Petro created a list of other documents to be provided to you electronically. These included the legal cost for purchasing the theatre and two buildings to the north, proposals from three architects interviewed for the first theatre concept, a forecast by theatre consultant Stephen Libman, three proposals from architects who would rehab the theatre, and the projected costs made by

two architects of rehabbing the theatre. Ms. Petro states you agreed to this list at the end of your meeting. You were emailed all of the listed documents by May 25, 2016.

It is not immediately clear from your request which documents you have not been provided. You note that you requested a copy of the economic impact study done of the Town Theatre done in 2012, however, Ms. Petro notes in her response there may be some misunderstanding; because no formal study was undertaken. Rather, the Highland Main Street organization explained the benefits it would provide and theatre consultant Stephen Libman presented a power point presentation to the Town Council on July 21, 2014, explaining the benefits it could provide to the town. This power point is available for review on the town's website.

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

Under Indiana Code 5-14-3-3(a)(1), "a request for inspection or copying must identify with reasonable particularity the record being requested." Reasonable particularity is not defined under the APRA. If the public agency cannot determine what records to seek, your request is determined to have lack of reasonable particularity. A public agency is not required to fulfill a request which lacks reasonable particularity.

Your complaint lacks reasonable particularity, because you have not stated what records you are seeking. A request for "all documents and emails related to the rehabilitation of the Town Theatre" and "all other costs for the town theatre" lacks reasonable particularity because the request leaves to the Director's discretion which records to disclose.

While your request does lack reasonable particularity, the Commission made efforts to ascertain specific documents which would be of interest to you. Ms. Petro provided you with the documents you identified in your May 24, 2016 meeting via email within 24 hours. When you did not receive any additional documents you believed were forthcoming, you did not inquire with Ms. Petro as to the availability and status of these specific documents, but rather filed a complaint for a violation of the APRA.

When a request lacks reasonable particularity, the public agency is not required to conduct a vast search of all its records to produce each document which may fall within the broadly defined terms of the requestor. Rather, it may deny the initial request and require the requestor to craft a more specific request in which the documents sought are readily identifiable. Here, the Commission appears to have gone above and beyond its duty to respond to your request and provide as many documents as it could identify that fell within your broad search criteria.

The remaining records you contend have not been provided are not clear to either the Commission or this office. If there are additional records that you can identify with reasonable particularity for the Commission to retrieve, it is my advice that you file another request identifying specific documents you would like to review. If you require guidance as to what a proper records request looks like seeking, for example, emails, please contact my office at your convenience. It is my sincere hope that this process will allow you to receive the documents you seek to obtain.

CONCLUSION

Based on the forgoing, it is the Opinion of the Public Access Counselor the Commission acted in good faith and was timely in its responses to you and, therefore, there was no violation of Access to Public Records Act.

Regards,

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

Luke H. Britt
Public Access Counselor

Cc: Ms. Cecile LaCombe Petro