



STATE OF INDIANA

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August 24, 2016

Mr. John Kelly
Ms. Melissa Leffingwell
534 Main Street
Brookville, Indiana 47012

Re: Formal Complaint 16-FC-170; Alleged Violation of the Access to Public Records Act by the Town of Brookville Town Council and the Brookville Clerk/Treasurer (Consolidated)

Dear Mr. Kelly and Ms. Leffingwell:

This advisory opinion is in response to your formal complaint alleging the Town of Brookville Town Council ("Council") and Clerk/Treasurer ("Clerk Treasurer") (collectively known as "Town") violated the Access to Public Records Act ("APRA"), Indiana Code § 5-14-3-1 et. seq. The Town has responded via Ms. Tammy Davis, Esq. 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 July 19, 2016.

BACKGROUND

Your complaint dated July 16, 2016, alleges the Town of Brookville Town Council and Clerk/Treasurer violated the Access to Public Records Act by failing to respond within seven (7) days.

On July 5, 2016 you submitted a records request to the Council and Clerk/Treasurer. You are seeking records related to an INDOT project on U.S. 52. You requested "all records of communications regarding this project" between INDOT, the Town and any other agreements. You also requested other records such as those "that reference or relate to ownership, easements, or right-of ways" related to the project.

On July 20, 2016 the Town responded. The Town first notes the Clerk/Treasurer did not receive your request. Instead, the request was sent via certified mail to the Franklin County Clerk/Treasurer and not the Brookville Clerk/Treasurer. Your request was redirected to Ms. Davis for response. The Town states Ms. Davis, the Town attorney, was undergoing surgery in June and she did not return until July 12, 2016. Your request was responded to on July 13, 2016. The Town states it has compiled the entire INDOT file in response to your request and the records are available for you.

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 Town of Brookville 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 Town’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)*.

A request for records may be oral or written. *See Indiana Code § 5-14-3-3(a); § 5-14-3-9(c)*. 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 Indiana 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.

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, then your request is determined to lack reasonable particularity. A public agency is not required to fulfill a request which lacks reasonable particularity.

Your request was mailed on July 5, 2016. The Town Attorney did not return to work until July 12, 2016. The Town states your request was responded to on July 13, 2016. The Town has not provided a copy of this letter, but it appears your request was received by the County Clerk/Treasurer on July 5, 2016. The Town does not state when your request was received from the County Clerk/Treasurer.

There are two separate issues here, an improper address and a delayed response. The burden lies with the requestor to send the request to the proper location. Your request was received the Franklin County Clerk/Treasurer on July 5, 2016 and delivered to the Brookville Clerk/Treasurer sometime later. Therefore, your request was considered received on the date it was accepted by the Clerk/Treasurer.

The second issue is the delayed response. In situations such as these, where the agency attorney is out of the office for a prolonged period of time, I expect public agencies to delegate certain duties to other individuals.

In this case, while neither the Clerk nor the Council can act as the Town attorney, a response under the APRA does not require an attorney’s supervision. Because the purpose of a response is merely to serve as an acknowledgement the public records request was received, this duty could have been fulfilled by the Council and the Clerk/Treasurer. Similarly, this duty could have been fulfilled by a paralegal at the attorney’s office. I do not consider it so difficult for a Town to realize if a public official or agent is unavailable for a period of time, another individual should be delegated the responsibility of acknowledging APRA requests.

However, given the fact your request was sent to the improper address and because the Town Attorney was not present, it is understandable that some level of delay would occur. In this case, your request was

acknowledged eight (8) days after receipt. I do not find this an unreasonable amount of time given the circumstances.

The Town states you were provided all records responsive to you. You contend in your August 1, 2016 complaint you did not receive all documents responsive to your request. The Town has stated you have been provided the entire INDOT file. This office is not a finder of fact and cannot determine whether you received all records responsive to your request. However, it appears the Town has provided you everything it possesses. You have not stated your basis for contending the Town has other records. Rather, it is more likely the remaining files you seek are in possession of INDOT. I advise you to address any additional requests to the Indiana Department of Transportation.

CONCLUSION

Based on the forgoing, it is the Opinion of the Public Access Counselor the Town of Brookville did not violate the Access to Public Records Act.

Regards,

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

Luke H. Britt
Public Access Counselor

Cc: Ms. Tammy Davis, Esq.