



STATE OF INDIANA

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September 1, 2016

Ken Davidson
7407 Montana Avenue
Hammond, Indiana 46323

Re: Formal Complaint 16-FC-173; Alleged Violation of the Access to Public Records Act by the Northwest Indiana Regional Development Authority

Dear Mr. Davidson:

This advisory opinion is in response to your formal complaint alleging the Northwest Indiana Regional Development Authority ("Authority") violated the Access to Public Records Act ("APRA"), Indiana Code § 5-14-3-1 et. seq. The Authority has responded via Mr. David Hollenbeck. His 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 21, 2016.

BACKGROUND

Your complaint dated July 17, 2016, alleges the Northwest Regional Development Authority violated the Access to Public Records Act by not providing all of the documents pursuant to your request.

On June 22, you submitted a request for access to:

1. any and all email correspondence between Bill Hanna and any member of the One Region Staff.
2. any and all email correspondence between Bill Hanna and Thomas Keon.
3. any and all email correspondence between Bill Hanna and State Representative Soliday.
4. any invoices, receipts, checks or other items evidencing any payment to One Region or the Northwest Indiana Quality of Life Counsel.
5. any invoices, receipts, checks or other items evidencing any payment to Lake Area United Way.
6. Any and call credit care statements, expense documentation or other items evidencing any reimbursement for expenses to any RDA employee.

You received an acknowledgment from Mr. Hollenbeck on May 12. However, you received no further communications from the Authority.

On August 2, the Authority responded. It notes your request was fulfilled on June 22 except for correspondence between the Authority and General Assembly members.

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 Northwest Indiana Regional Development Authority 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 Authority’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)*.

Based on communications with the Authority, it appears you have already been provided the records in question except for certain email communication. The Authority cites *Citizens Action Coalition v. Koch*, No. 49S00-1510-PL-00607 (2016). That case declared that the General Assembly was unequivocally subject to the Access to Public Records Act, however, they had the discretion to define their own work product under Ind. Code § 5-14-3-4(b)(14) (the work product of individual members and the partisan staffs of the general assembly). This discretionary exemption to disclose, however, must not and cannot apply to any other public entity except for the Indiana General Assembly.

I addressed a similar case in a previous opinion, Formal Opinion 16-FC-150. I wrote

The Council, however, cites legal precedent in which the Court declared specific issues relating to legislative procedures to be nonjusticiable because of Indiana’s constitutional provision requiring separation of powers. The holdings in *Masariu v. The Marion Superior Court No. 1*, 621 N.E.2d 1097 (Ind. 1993) and *Berry et al. v. Crawford, et al.*, 990 N.E.2d 410 (Ind. 2013), relied upon by the Council, exclusively address judicial enforceability of internal legislative procedures for the State General Assembly. These cases do not address applicability of the Access to Public Records Act to local legislative bodies.

The Council also cites *Citizens Action Coalition v. Koch*, No. 49S00-1510-PL-00607 (2016), in which the court declined to interpret what materials fell within the legislative “work product” exemption of the APRA. The Court concluded the APRA does apply to a legislative body, including the members and groups which make up the legislative body. *Id.* at 5. The Council mistakenly interprets this extremely narrow ruling on the justiciability of the legislative work product exemption as allowing *any* legislative body to deny an APRA request. This is most certainly not the case.

The Indiana General Assembly provided a statutory mechanism for a requestor to seek a remedy through the judiciary for the denial of public records by any public agency at Indiana Code § 5-14-3-9(e). Although the Supreme Court did not interpret this statute as an implicit waiver of the separation of powers argument, it only addresses the State of Indiana Legislature’s work product. I will not interpret *CAC v. Koch* as applying to any government entity except the Indiana General

Assembly and its members. To do so would erode the very purpose of the APRA and effectively render it completely meaningless.

Citizens Action Coalition specially addressed public access to the work product of the General Assembly. The holding was based on a separation of powers analysis. It cannot be used by local agencies to refuse access to public records, regardless of their content. The Indiana General Assembly may claim the exemption but another agency may not do so on their behalf.

If these records exist, they must be disclosed unless the Northwest Indiana Regional Development Authority can appropriately set forth another exemption to disclosure.

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: David Hollenbeck, Esq.