



STATE OF INDIANA

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September 22, 2016

Mr. Keith Roysdon
345 South High Street
Muncie, Indiana 47305

Re: Formal Complaint 16-FC-204; Alleged Violation of the Access to Public Records Act by the City of Muncie Building Commissioner

Dear Mr. Roysdon:

This advisory opinion is in response to your formal complaint alleging the City of Muncie Building Commissioner ("Commissioner") violated the Access to Public Records Act ("APRA"), Indiana Code § 5-14-3-1 et. seq. The Commissioner has responded via Mr. John Quirk, Esq. His response has been 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 August 17, 2016.

BACKGROUND

Your complaint dated August 17, 2016, alleges the City of Muncie Building Commissioner did not fulfill a public records request. You allege it had been the practice of the Building Commissioner to allow your newspaper to routinely inspect the records of the Commissioner on demand in the Commissioner's Office. That practice changed recently when you were asked to put any access requests in writing instead of having the materials available to you.

You pose three (3) questions in your complaint. The first is whether the Commissioner can require your paper to fill out a written form before accessing materials. Secondly, can the Commissioner require you to narrow down the scope of your inspection request to the particular permit you seek to inspect. And finally, you inquire as to whether the Commissioner charge a \$25 'research fee' for inspection is allowable.

The Commissioner responded by arguing that access was not specifically denied to you or your paper, but a new policy had been implemented to protect the integrity of the building permit filing system. Moreover, you were invited to make a more reasonably particular request to seek specific files for inspection and copying.

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 City of Muncie Building Commissioner is a public agency for the purposes of the APRA. *See Indiana Code § 5-14-3-2(n)*. Accordingly, any person has the right to inspect and copy the Commissioner’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 submitted 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.

Rather than treat this as an adversarial complaint, I am choosing to make certain recommendations and use this as an educational opportunity. Many public agencies have good relationships with the local press and provide unfettered access to their files. This allows the media to obtain the information they need for their research and give the perception the public agency is being as transparent as possible. Historically, this appears to be the practice with the City Building Commissioner and the Muncie Star Press. From telephone conversations with both parties, it is clear a harmonious relationship is in both sides’ best interests.

Sometimes unfettered access to a local government’s files is practical and sometimes it is not. Often public agencies will limit access to certain times or in certain ways to ensure the agency can keep files in an orderly fashion and there is no risk of misplacing a file. This may involve a written form for a public access request to keep a paper trail of who is looking at the files. Or it may be a weekly appointment with a reporter where the journalist can inspect the files under the supervision of a clerk or assistant. With large municipalities, having some structure around accessibility to records often benefits both sides.

My message to public agencies has generally been to keep a record of public access requests in written form. Indiana Code § 5-14-3-3(a)(2) allows a public agency to require this. This creates a paper trail and a more organized system for handling all record requests. While the process has been more casual in the past, I do not fault the City for wanting to have a more formal way of requesting records. The question becomes what the form must contain in order for it to be accepted by the Commissioner.

Indiana Code § 5-14-3-3(b)(1) requires a requestor to submit a public records request with reasonable particularity. This term is not defined in the APRA and can very well differ based on the situation, the agency, and the records involved. It seems apparent in this matter there is no way to request information on a particular permit without first inspecting the file. This makes it impossible for a requestor to pinpoint exactly which specific file they are seeking. The solution posed by the Commissioner may be on point. Narrowing down the request to a weekly basis would still allow a reporter to come in and inspect all the permits for that week without identifying a specific file. Moreover, the Commissioner would be able to better control the organization of the files, generally.

Therefore, my recommendation is for the City to accept a written records request from the paper with a standard degree of specificity of one (1) weeks' worth of permits. The paper does not have to further identify an address or owner or business, but would be able to inspect any permit within that specified week.

As for any fees associated with the permits, inspection should be free of charge. Time and labor or other overhead incurred on the part of City staff cannot be charged back to a requester. If copies are requested, the cap for any fee is \$.10 per black and white copy. No research fee may be levied. This is consistent with Indiana Code § 5-14-3-8(d).

Please do not hesitate to contact me with any questions.

Regards,

A handwritten signature in black ink, appearing to be 'LH Britt', written in a cursive style.

Luke H. Britt
Public Access Counselor

Cc: Mr. John Quirk, Esq.