
OPINION OF THE PUBLIC ACCESS COUNSELOR

SHARA B. HOSTETLER,
Complainant,

v.

CITY OF SOUTHPORT,
Respondent.

Formal Complaint No.
18-FC-19

Luke H. Britt
Public Access Counselor

BRITT, opinion of the Counselor:

This advisory opinion is in response to a formal complaint alleging the City of Southport (“City”) violated the Access to Public Records Act¹ (“APRA”). Southport Clerk-Treasurer Diana S. Bossingham filed an answer on behalf of the City. In accordance with Indiana Code § 5-14-5-10, I issue the following opinion to the formal complaint received by the Office of the Public Access Counselor on February 1, 2018.

¹ Ind. Code §§ 5-14-3-1 to -10

BACKGROUND

Shara B. Hostetler (“Hostetler”), a Southport City Councilor, filed a formal complaint alleging the City of Southport (“City”), specifically Clerk-Treasurer Diana Bossingham, violated the Access to Public Records Act (“APRA”) by improperly denying her access to public records. Specifically, Hostetler contends that the Clerk-Treasurer failed to respond to her records request.

On December 18, 2017, Councilor Hostetler emailed Bossingham requesting a “copy of the numbers for the Police Department Statistics Report that the Council used to receive regularly each month” for the months of February 2017 through November 2017. Further, Hostetler identified twenty six data sets—for each month—that she wanted as part of the request. Although the entire list will not be cited here, essentially the data sets involve the total number of specific law enforcement activities (i.e., arrests, traffic tickets, accidents, number of hours paid, etc.).

On December 22, 2018, the Clerk-Treasurer emailed Hostetler stating that she must submit her request on a written form prescribed by the Clerk-Treasurer’s office.

As required, Hostetler submitted the request form—dated January 2, 2018—to the Clerk-Treasurer by email on January 5, 2018. On the form, Hostetler incorporated her December 18, 2017 email by reference and stated that she preferred to have the records sent via email and if not, by certified mail.

On January 23, 2018, Hostetler emailed Bossingham for a status update on her request. After receiving no response,

Hostetler sent another follow up email three days later and again did not receive a response.

As a result, Hostetler filed a formal complaint against the City with this office on February 1, 2018.

Hostetler contends that the City violated APRA because it failed to respond to her request.

This Office notified the City of the complaint on February 2, 2018. The Clerk-Treasurer filed an answer on behalf of the City on February 15, 2018.

The City disputes Hostetler's claim that an APRA violation has occurred in this case. Specifically, Clerk-Treasurer Bossingham contends that her email response on December 22, which informed Hostetler that she must submit her request on the appropriate form, qualified as the response required under APRA. Still, the Clerk-Treasurer acknowledges that she "perhaps" failed to respond to Hostetler's request on January 5, 2018.

Moreover, the City contends that Councilor Hostetler received a response to her request on February 1, 2018 and received responsive records seven days later.

ANALYSIS

This case presents a specific question about whether the Clerk-Treasurer's email in December informing Councilor Hostetler that her records request must be on the proper form constitutes a response to the January 5, 2018 request

1. The Access to Public Records Act (“APRA”)

It is the public policy of the State of Indiana that all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees. Ind. Code § 5-14-3-1. Further, 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.” *Id.* There is no dispute that the City of Southport (“City”) is a public agency for the purposes of the APRA; and thus, subject to the Act’s disclosure requirements. Ind. Code § 5-14-3-2(q)(6).

Therefore, unless otherwise provided by statute, any person may inspect and copy the City’s public records during regular business hours. *See* Ind. Code § 5-14-3-3(a). Still, the Act contains both mandatory and discretionary exceptions to the general rule of disclosure. Specifically, APRA prohibits a public agency from disclosing certain records unless access is specifically required by state or federal statute or is ordered by a court under the rules of discovery. *See* Ind. Code § 5-14-3-4(a). In addition, APRA lists other types of public records that may be excepted from disclosure at the discretion of the public agency. *See* Ind. Code § 5-14-3-4(b).

Notably, a public agency is required to make a response to a written request that has been mailed within seven (7) days after it is received or the request is deemed denied. Ind. Code § 5-14-3-9(c). If a records request is not denied, an agency must produce requested records within a *reasonable time*. Ind. Code § 5-14-3-3(b).

In this case, based on the evidence presented, the parties seem to dispute whether the Clerk-Treasurer failed to respond to Hostetler's records request. Although Clerk-Treasurer Bossingham recognizes that she must acknowledge receipt of a request for access to public records within a specific time period, she contends that she satisfied this requirement on December 22, 2017.

This argument is unconvincing. Critically, nothing in the Clerk-Treasurer's response on December 22 acknowledges receipt of Hostetler's records request. Instead, Clerk-Treasurer Bossingham merely notes that the City of Southport is governed by the "Indiana Code on Access to Public Records...", rather than the federal Freedom of Information Act and also states that she attached the appropriate form required for Hostetler to complete for a proper request. In other words, the message indicated that Hostetler's records request was not in the proper form for processing. Implicit in the notion of acknowledging receipt of a request is the existence of a proper request.

On January 5, 2018, Hostetler presented a records request—presumptively in proper form because the City did not challenge it otherwise—and received no response until February. Thus, Hostetler's request was deemed denied under APRA.

Bossingham notes that her office was uncharacteristically busy and understaffed at the time of Hostetler's request, which included a leave of absence and concluding end-of-year business for the year 2017. As a result, she assigned her deputy the responsibility of taking care of "absolutely necessary items."

The Clerk-Treasurer should be mindful of her duty under APRA as set forth by the legislature. Specifically, APRA expressly 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.” Ind. Code § 5-14-3-1 (emphasis added). Arguably, this is also “absolutely necessary” albeit contemporaneous with other critical duties.

The Clerk-Treasurer’s answer in this case is devoid of any recognition of the legislature’s intent under APRA, which imposes a duty on public officials and their employees to provide information to the public.

Granted, APRA does not require a public agency to cease or otherwise unreasonably burden its other duties, functions, or responsibilities. Here, there is certainly some indications that the Clerk-Treasurer’s office was experiencing unusual strain as it pertains to its resources.

Even so, it is difficult to imagine that a simple response acknowledging Hostetler’s request would be a bridge too far, even during an unusually busy time for the office. While the ultimate production of the responsive documents may be delayed for these reasons, simple receipt of a request is a minimal obtrusion.

CONCLUSION

Based on the foregoing, it is the opinion of the Public Access Counselor that the City of Southport violated the Access to Public Records Act by failing to respond to Hostetler's request.

A handwritten signature in black ink, appearing to read 'LHB', with a long, sweeping underline.

Luke H. Britt
Public Access Counselor