
OPINION OF THE PUBLIC ACCESS COUNSELOR

EDWARD R. BAY,
Complainant,

v.

CITY OF BEDFORD,
Respondent.

Formal Complaint No.
19-FC-130

Luke H. Britt
Public Access Counselor

BRITT, opinion of the Counselor:

This advisory opinion is in response to two formal complaints¹ alleging the City of Bedford violated the Access to Public Records Act.² Attorney James G. Pittman filed a response on behalf of the city. In accordance with Indiana Code § 5-14-5-10, I issue the following opinion to the formal

¹ This office consolidated the complaints and will address both in a single advisory opinion.

² Ind. Code § 5-14-3-1, to 10.

complaint received by the Office of the Public Access Counselor on November 21, 2019.

BACKGROUND

This case is about public access to lists.

On October 23, 2019, Edward R. Bay (“Complainant”) emailed two separate public records requests to the City of Bedford seeking the following records respectively:

1. Complete list of all City of Bedford employees who have retired (or will retire) from their positions as employees of the City of Bedford between January 1, 2008 and December 31, 2019.
2. A complete list of all current City Employees by first initial and last name.

The same day, the city acknowledged by requests by email.

On November 7, 2019, Bay emailed the city requesting the following:

All active tax abatements on the City of Bedford books, including the Company name, (if a company has more than [sic] one please list them individually, name and amount of the project for which the abatement was sought, conditions for which the abatement was approved (additional employees, etc.), amount of tax savings to the company for each abatement.

The same day, Bedford acknowledged Bay’s request. On November 19, 2019, the city issued a final response to Bay asserting the lists he requested on October 23 and November 7 do not exist.

As a result, Bay filed two complaints with this office. One complaint addressed the request on October 23, 2019, and the other over the request on November 7, 2019. This office consolidated the complaints under one case number.

On December 16, 2019, the City of Bedford filed an answer with this office. In essence, the city disputes Bay's assertion that it violated the Access to Public Records Act because the lists requested by Bay do not exist.

ANALYSIS

1. The Access to Public Records Act ("APRA")

The Access to Public Records Act ("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." Ind. Code § 5-14-3-1.

The City of Bedford is a public agency for the purposes of APRA; and thus, is subject to the Act's requirements. *See* Ind. Code § 5-14-3-2(q).

As a result, any person has the right to inspect and copy the city's disclosable public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt from disclosure under APRA. *See* Ind. Code § 5-14-3-3(a), and (b).

2. Lists

The crux of this case is a factual dispute about the existence of the lists requested by Bay. As set forth above, Bay filed

two formal complaints with this office arguing the city's denials constitute a violation of APRA. Conversely, Bedford argues that the lists requested by Bay do not exist.

Indeed, if the lists do not exist, the inquiry into a public access violation is over.

APRA governs access to public records. It follows that a public agency cannot violate the law for failing to provide a record that has no objective existence.

Here, Bay requested three specific lists from Bedford, which the city contends do not exist.

Although the city likely has some or all of the relevant pieces of information that Bay wants in list form, the law does not require Bedford to extract and assemble the information to create a new public record in the form of a list to satisfy his requests.

At the same time, if the specific lists requested by Bay exist, the city carries the burden of nondisclosure under APRA. It is worth mentioning that Bay offers no countervailing evidence disputing Bedford's contention that the lists do not exist.

CONCLUSION

Based on the foregoing, it is the opinion of this office that the City of Bedford did not violate the Access to Public Records Act.

A handwritten signature in black ink, appearing to read 'LH Britt', with a stylized flourish at the end.

Luke H. Britt
Public Access Counselor