

**OPINION OF THE PUBLIC ACCESS COUNSELOR**

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JEFF WATSON,  
*Complainant,*

v.

CITY OF DELPHI CLERK-TREASURER,  
*Respondent.*

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Formal Complaint No.  
20-FC-121

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Luke H. Britt  
Public Access Counselor

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BRITT, opinion of the counselor:

This advisory opinion is in response to a formal complaint alleging the City of Delphi Clerk-Treasurer violated the Access to Public Records Act.<sup>1</sup> Clerk-Treasurer Leanne Aldrich filed an answer on behalf of her office. 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 November 30, 2020.

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<sup>1</sup> Ind. Code § 5-14-3-1-10.

## **BACKGROUND**

This case involves a dispute over access to public records, including certain financial records, of the City of Delphi.

On June 5, 2020, Jeff Watson (Complainant) filed a public records request with Delphi's Clerk-Treasurer seeking the following:

1. Any and all water utility financial records from the 2012 Stellar Program in Delphi, including grant funds, rate payer fees and monies transferred from any and all accounts into or out of the water utility fund;
2. Any and all communication between the State of Indiana and the City of Delphi regarding the water utility portion of the 2012 Stellar Program which includes, but is not limited to emails, fax transmittals, texts, cell phone records, etc. (some of the requested communication could have happened in 2011);
3. A copy of minutes of the Delphi City County and Board of Works meetings from 2012 to 2016; and
4. A copy of all Delphi City bank statements from Jan. 1, 2012 to Dec. 31, 2015.

On June 10, 2020, the Clerk-Treasurer sent an acknowledgement of the request to Watson. Additionally, the city requested approval of copying costs but Watson did not reply at the time. Watson eventually approved the costs on September 14, 2020. The Clerk-Treasurer also asked for clarification on certain items but did not receive a response.

Watson filed his complaint with this office on August 25, 2020, but he supplied additional information on November 17, 2020, arguing the records responses were insufficient.

## ANALYSIS

### 1. The Access to Public Records Act

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.

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 Delphi Clerk-Treasurer’s Office is a public agency for purposes of APRA; and therefore, subject to its requirements. *See* Ind. Code § 5-14-3-2(q).

As a result, unless an exception applies, any person has the right to inspect and copy the Clerk-Treasurer’s public records during regular business hours. Ind. Code § 5-14-3-3(a). Indeed, APRA contains exceptions—both mandatory and discretionary—to the general rule of disclosure. *See* Ind. Code § 5-14-3-4(a)—(b).

### 2. Reasonable particularity of Watson’s request

The crux of this dispute is whether Watson’s request meets the particularity standards set by APRA, our courts, and this office.

Under APRA, a request for inspection or copying “must identify with reasonable particularity the record being requested.” Ind. Code § 5-14-3-3(a)(1).

Requiring reasonable particularity relieves a public agency from the guesswork of having to anticipate exactly what a requester is seeking. While a request does not have to identify a record with pinpoint precision, some specificity is required.

Although “reasonable particularity” is not statutorily defined, the Indiana Court of Appeals addressed the meaning of the phrase in two seminal cases. Most notably, in *Jent v. Fort Wayne Police Dept.*, which involved a dispute about daily incident report logs, the court concluded that reasonable particularity “turns, in part, on whether the person making the request provides the agency with information that enables the agency to search for, locate, and retrieve the records.” 973 N.E.2d 30 at 34 (Ind. Ct. App. 2012).

The judiciary has also stated that implicit in the Indiana access laws is practicality. *See Smith v. State*, 873 N.E.2d 197, 201 (Ind. Ct. App. 2007). This office adopts that standard as well.

In trial discovery, the phrase “any and all” can be a useful tool to capture as much information as necessary and relevant to a party’s case. Public access, however, does not work exactly the same. While “any and all” is not a fatal flaw in a public records request, it can be a red flag that the requester is trawling for information using too wide of a net. This office generally disagrees with that type of request.

Take, for example, Watson’s request for any and all communication regarding the 2012 Stellar program. Since

the retention period for general communication is only three years and Watson named no specific individuals. So, there is a strong likelihood the Clerk-Treasurer would not have any of those records, nor would she bear the burden of searching for them.

Additionally, the Clerk-Treasurer asserts that Delphi has eleven checking accounts. Accordingly, she invited Watson to clarify which check books of which he wanted copies.

To that end, an invitation to narrow a request of this type is not a barrier to access, nor is it inadvisable of a public agency to do so. Reasonable particularity is not merely a convenient excuse to ignore or deny a request, but rather a real and proper mechanism to ensure responsiveness is efficient and fair to both parties.

Therefore the recommendation of this office is that Watson tighten up his request and work with the Clerk-Treasurer to identify exactly what records he seeks. It appears as if communication between the parties has gone off the track and it is the hope of this office that this opinion can be used as a conduit to renew those discussions.

## **CONCLUSION**

Based on the foregoing, it is the opinion of the Public Access Counselor that the Delphi Clerk-Treasurer did not violate the Access to Public Records Act.

A handwritten signature in black ink, appearing to read 'LH Britt', is positioned above the printed name.

**Luke H. Britt**  
Public Access Counselor