

OPINION OF THE PUBLIC ACCESS COUNSELOR

LORA REDWEIK,
Complainant,

v.

CASS COUNTY ECON. DEVELOPMENT AGENCY,
Respondent.

Formal Complaint No.
20-FC-137

Luke H. Britt
Public Access Counselor

BRITT, opinion of the counselor:

This advisory opinion is in response to a formal complaint alleging that the Cass County Economic Development Agency violated the Access to Public Records Act.¹ Commission counsel John Hillis filed an answer on behalf of the agency. In accordance with Indiana Code § 5-14-5-10, I issue the following opinion to the formal complaint received

¹ Ind. Code § 5-14-3-1-10.

by the Office of the Public Access Counselor on September 24, 2020.

BACKGROUND

This case involves a dispute over access to financial reports shared by the Cass County Economic Development Agency (CCED) with the Cass County Board of Commissioners.

On August 5, 2020, Lora Redweik (Complainant) filed a public records request with Christy Householder, the Director of Economic Development of Cass County, seeking the following:

1. A copy of the Cass County Economic Development report that was provided to the Cass County Commissioners for your monthly report prior to the Commissioners monthly meetings for the following meetings:” October 2018 through August 2020
2. All associated supporting documents, notes, and reports that are used to complete the Cass County Economic Development monthly reports for the same meetings listed above.

On August 16, 2020, Redweik submitted a second request with Householder seeking the following:

1. A copy of all Request for Information (RFI), as well as any other supporting documents that were submitted by the Indiana Economic Development Corporation (IEDC) for the timeframe of January 1, 2018 to December 31, 2018 and January 1, 2019 to December 31, 2019.

2. A copy of all Request for Proposals (RFP), as well as any other supporting documents that were submitted by the Indiana Economic Development Corporation (IEDC) for the timeframe of January 1, 2018 to December 31, 2018 and January 1, 2019 to December 31, 2019.

On September 9, 2020, Householder responded to both of the Redweik's requests, informing her that in order to enable the commission to negotiate effectively on behalf of all Cass County residents, records relating to negotiations between the Indiana Economic Development Corporation or a governing body of a political subdivision with industrial, research or commercial prospects are exempt from disclosure.

Redweik argues that her August 5, 2020, request should not have been denied because she had previously requested copies of monthly reports for February 2018 through September 2018 and received those copies without issue. She questions why an agency should withhold these records when similar ones were previously disclosed by the same body. As for her August 16 request Redweik asserts that information contained within RFPs and RFIs is extremely limited, and therefore, if released, would not pose a risk to the confidentiality of the parties involved.

On October 13, 2020, the CCED submitted a response maintaining that it was appropriate for the county to withhold the requested records from disclosure in accordance with Indiana Code 5-14-3-4(b)(5). As for Redweik's argument that she previously received access to similar records, the CCED explained that each request is reviewed individually and the agency is well within its

rights to deny disclosure if they see fit, regardless of what records have previously been released.

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. Cass County 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 county’s—including its commissions’ and departments’—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).

3. Economic development records

Redweik questions whether information requests are subject to the APRA disclosure exceptions under section 4(b)(5).

Specifically, the statute at issue here is Indiana Code subsection ~~5-14-3-4(b)(5)(A)(v)~~ & (vii). Under APRA, records relating to negotiations between local economic commission (or a governing body of a political subdivision) and an industrial, research, or commercial prospect may be excepted from disclosure at the discretion of the agency, if the records are created while negotiations are in progress.

In other words, APRA expressly bestows the Economic Development Commission of Cass County with the latitude to choose what records, if any, it will release publicly so long as the records satisfy the requirement of “relating to its negotiations with industrial, research, or commercial prospects” and the records are created while negotiations are in progress. *See* Ind. Code § 5-14-3-4(b)(5)(A)

The commission relied on section 4(b)(5)(A)(vii) in denying Redweik’s request. Notably, Redweik does not argue that the requested records are not related to the negotiations with a commercial prospect or that the records were not created during the negotiations.

The liberty to which the law gives public entities to engage in economic development with private third parties in a vacuum is not for this office to question. As a matter of interpretation, however, the scope to do so is quite broad. Until a final offer is presented, preliminary materials relating to negotiations are able to be withheld by a county and its commissions.

Moreover, it can be reasonably presumed that reports from the economic development commission and the county commissioners will necessarily contain negotiation updates and materials related to those negotiations.

Toward that end, it is important to note that these statutory exceptions fall into the category of records known as discretionary release. This simply means an agency has the choice whether to release or withhold them. They are not confidential or nondisclosable *per se*, but they may be sensitive to a degree to which an agency exercises discretion to keep in-house.

An agency should exercise this discretion judiciously and only as needed, but an agency can credibly choose to release some reports and not others; or they may choose to disclose some pieces of information but not others to preserve the integrity of negotiations. Therefore to the extent some information was released in the past but not during the present talks is still consistent with the law.

Given the statutory discretion afforded the county by subsection 4(b)(5)(A)(vii) they can likely withhold the material in question.

CONCLUSION

Based on the foregoing, it is the opinion of this office that the Cass County Economic Development agency 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