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**OPINION OF THE PUBLIC ACCESS COUNSELOR**

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DAVE M. CRANDALL,  
*Complainant,*

v.

FAIRFIELD TOWNSHIP,  
*Respondent.*

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Formal Complaint No.  
20-FC-7

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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 Fairfield Township violated the Access to Public Records Act.<sup>1</sup> Fairfield Township Trustee Taletha Coles filed an answer to the complaint on behalf of the township. 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 January 15, 2020.

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<sup>1</sup> Ind. Code §§ 5-14-3-10

## **BACKGROUND**

On October 8, 2019, and November 22, 2019, Dave M. Crandall (Complainant) filed a public records request with Fairfield Township requesting the following:

10/8/19: A copy of all DC minutes for 2019 please

11/22/19: Meeting minutes from 11/16/19 meeting, all audio records from 2019, and any information pertaining to DC Lawn Care

On November 22, 2019, Fairfield Township Trustee Talletha Coles (Trustee) responded to Crandall's second request by writing on the request form that the information Crandall requested would not be available until after the township board's meeting in December.

On January 15, 2020, Crandall filed a formal complaint alleging Fairfield Township improperly denied him access to public records in violation of the law.

In sum, Crandall contends that the Township has denied several of his requests for meeting minutes. Although he acknowledges that he received copies of some of the meeting minutes he requested, Crandall contends the minutes are inaccurate. Crandall argues that one of the meetings he attended did not reference all of the items from the meeting in the minutes. Crandall also contends that his requests for all audio recordings from the board's meetings has not been granted.

On February 13, 2020, the Trustee filed an answer to Crandall's complaint denying the township violated APRA. First,

the Trustee argues that Crandall's complaint is invalid because he did not file within 30 days of the denial of records.

Second, Coles explained that Crandall's October 8, 2019, request "was for all minutes from 2019, however, he was specifically interested in the minutes for that day's meeting; which he attended." The Trustee contends that she told Crandall that a draft of that meeting's minutes would not be available until shortly before the next scheduled meeting on October 22, 2019, but he would receive a copy of the minutes via email.

Third, the Trustee dismisses Crandall's suggestion that the minutes from the board's meeting on October 8, 2019, are inaccurate. Moreover, she notes that the board stands by the official approved minutes and notes that Crandall does not state any specific omission from the minutes.

Fourth, in response to Crandall's November request, the Trustee asserts that she again explained to Crandall that the signed and approved minutes for the November 16, 2019, meeting would be available right after the next board meeting on December 10, 2019.

Finally, the Trustee contends that township board meetings are not recorded; and thus, there are no audio recordings to provide to Crandall.

The Trustee says she explained, in detail, to Crandall that the device on the conference room table is for conference calls, not recording the meetings. She also asserts that she explained to Crandall that the camera in the meeting room is a security camera that is only engaged when the room is not in use.

## 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. Fairfield Township (“Township”) 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 Township’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. In particular, 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).

### 2. Timely filing of formal complaints

Fairfield Township Trustee Taletha Coles argues that Crandall missed the statutory deadline to file a formal complaint with this office.

Indiana Code section 5-13-5-7(a) provides the following:

A person or a public agency that chooses to file a formal complaint with the counselor must file the complaint not later than thirty (30) days after:

- (1) the denial; or
- (2) the person filing the complaint receives notice in fact that a meeting was held by a public agency, if the meeting was conducted secretly or without notice.

Here, Crandall filed the formal complaint on January 15, 2020. He notes on the form that Fairfield Township denied two of his requests for records on October 8 and November 22, 2019 respectively. The Trustee contends that Crandall had 30 days from each of those dates to file a complaint.

Notably, the denial dates listed by Crandall on the complaint form are the dates he made the requests. In any event, the 30 day timeline starts tolling when an agency denies a request for records. Based on the information presented by both sides, this office cannot conclude that the Trustee denied either request on the dates provided.

Under APRA, the act of informing a requester that requested records are not currently available but will be in the near future does not constitute a denial. Crandall's complaint is considered timely.

### **3. Reasonable time**

Crandall challenges Fairfield Township's timeline for providing the minutes he requested. The Trustee asserts that on October 8, 2019, Crandall requested all 2019 meeting minutes but he specifically wanted the minutes from the meeting that happened that day, which he attended. The

Trustee contends that she informed Crandall that the draft of the minutes for the October 8 meeting would be available shortly before the meeting on October 22, 2019.

Under APRA, a public agency must provide the requested records within a reasonable time of receiving the request. Ind. Code § 5-14-3-3(b).

If Fairfield Township provided Crandall with minutes from the October 8, 2019, board meeting by October 22, 2019, that is quite reasonable for purposes of APRA.

Crandall is not clear in his complaint when he received the minutes. This office will presume that the Trustee provided the minutes as indicated in the township's response.

It is worth mentioning, that draft minutes are disclosable under APRA if they exist at the time of the request. Meeting minutes need not receive official approval before disclosure, an agency should simply mark them as draft.

#### **4. Accuracy of meeting minutes**

Crandall argues that the minutes from a township board meeting he attended on October 8, 2019, are inaccurate because the minutes are incomplete. The Trustee contends that the township board stands by the accuracy of the minutes. The Trustee also notes that Crandall does not specify any particular omission in the minutes.

Undoubtedly, meeting minutes are a public record under APRA. *See* Ind. Code § 5-14-3-2(r). Even so, APRA does not govern the content of meeting minutes.

The Open Door Law, which requires the board meetings to be open to the public, has a provision that requires the creation of meeting memoranda with specific information. *See* Ind. Code 5-14-1.5-4.

Here, Fairfield Township provided a copy of the meeting minutes in dispute. The document complies with the Open Door Law.

### **5. Audio recordings**

Crandall contends the township denied his request for audio recordings of the township board meetings. The Trustee contends that Fairfield Township does not record the board's meeting; and thus, there are no audio recordings to provide Crandall.

Under APRA, a public agency has a duty to provide disclosable public records within a reasonable time upon request. This requirement, of course, does not apply when the requested record does not exist.

To be sure, if a public agency creates an audio recording of a governing body's meeting, the recording is disclosable under APRA.

Here, Fairfield Township contends that it does not record board meetings. This office takes the Trustee at her word and has no reason to question that assertion.

## CONCLUSION

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

A handwritten signature in black ink, appearing to read 'LH Britt', is positioned above the name and title of the signatory.

Luke H. Britt  
Public Access Counselor