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**OPINION OF THE PUBLIC ACCESS COUNSELOR**

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DAVID WILLIAMS,  
*Complainant,*

v.

TOWN OF LEAVENWORTH,  
*Respondent.*

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Formal Complaint No.  
21-FC-58

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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 Town of Leavenworth violated the Access to Public Records Act (APRA).<sup>1</sup> Attorney Nicholas Siler filed an answer on behalf of the Town. In accordance with Indiana Code § 5-14-5-10, I issue the following opinion to the

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<sup>1</sup> Ind. Code § 5-14-3-1-10.

formal complaint received by the Office of the Public Access Counselor on May 17, 2021.

### **BACKGROUND**

This case involves a dispute over access to records concerning building projects approved by the Leavenworth Town Council.

On April 26, 2021, David Williams (Complainant) sent a public records request via email to Town Attorney Nicholas Siler seeking the following:

Copies of all bid documents related to any public construction projects let by the Town of Leavenworth within the past 24 months. This would include but not be limited to all notices, bid specs, bidder packets, bid tabulations, meeting minutes, etc.

On May 10, 2021, after not receiving a response to his request, Williams emailed Mr. Siler again to inquire about the status of his request. As of the filing of his complaint on May 13, Mr. Williams had not received an acknowledgement of his request or a response of any kind.

On June 7, 2021, Siler responded to Williams' complaint stating that on May 24, 2021 the Complainant took the opportunity to verbally relay his request to the Town's Clerk-Treasurer, whose office is responsible for maintaining the requested records. Siler's letter asserts that the Complainant received all of the requested materials.

When this office contacted the Complainant to confirm he had received the requested records, he denied Siler's claims,

sharing that he had yet to receive documentation associated with the second project and the request remains unfulfilled.

This office attempted throughout the month of June to resolve this issue with the Town and the Complainant without success.

## ANALYSIS

### 1. The Access to Public Records Act

The Access to Public Records Act 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 Town of Leavenworth is a public agency for purposes of APRA; and therefore, subject to the law’s 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 Town’s public records during regular business hours. Ind. Code § 5-14-3-3(a).

### 2. Public records requests generally

It is unclear exactly what process is deemed acceptable for filing a public records request in Leavenworth and whether it should be submitted to the Town attorney, its council or the clerk-treasurer. In any event, a submitted request should always be met with a timely acknowledgement. Once a request is submitted, the burden shifts to the agency to either fulfill the request, or appropriately deny when circumstances dictate.

Here, the request would be considered broad if submitted to a larger municipality but as there have only been two public construction projects in Leavenworth, the request is likely sound.

Moreover, the types of records sought are the type that are unequivocally disclosable and likely do not require much review or redaction, if any.

Mr. Williams has indicated there are materials he sought in his request that are outstanding. This office attempted to obtain confirmation with the Town as recently as June 22, 2021 and relay the complainant's ongoing concern. The outstanding items (notices, bid packets and tabulations, meeting minutes, etc.) remain unaddressed.

If these items exist (and they likely should) they should be forwarded to Mr. Williams upon receipt of this opinion.

## **CONCLUSION**

Based on the foregoing, it is the opinion of the public access counselor that the Town of Leavenworth shall immediately forward any outstanding items related to the construction projects to the complainant.

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

**Luke H. Britt**  
Public Access Counselor