
OPINION OF THE PUBLIC ACCESS COUNSELOR

MAGGIE L. SMITH,
Complainant,

v.

TOWN OF PENDLETON,
Respondent.

Formal Complaint No.
22-FC-120

Luke H. Britt
Public Access Counselor

BRITT, opinion of the counselor:

This advisory opinion is in response to a formal complaint alleging that the Town of Pendleton violated the Access to Public Records Act.¹ Attorney Jeffrey Graham filed an answer on behalf of the Town. 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 August 4, 2022.

¹ Ind. Code § 5-14-3-1-10.

BACKGROUND

This case involves a dispute about whether the Town of Pendleton violated the Access to Public Records Act (APRA) by failing to disclose public records within the law's reasonable time standard.

On May 31, 2022, Maggie L. Smith (Complainant) filed a public records request with the Town of Pendleton seeking documents related to the Impact Fee Ordinance No. 21-15 passed by the Town in July 2021. Smith's request consisted of 22 different items.

On June 20, 2022, the Complainant sent an email asking for an estimated timeframe for when she could expect her request to be fulfilled. On July 1, 2022, Smith had yet to get an ETA, nor had she received any responsive records. At this point she contacted the Town's attorney, who told her that the Town will begin providing documents responsive to your request early next week, which would have been July 6, 2022.

After hearing nothing from the Town, Smith again contacted the Town's attorney on July 11, 2022, requesting a status update, at which point she was told that she should get something by the end of the week.

On August 2, 2022, Smith asserts the Town provided four documents—two ordinances and two proofs of notice—from the request. Smith notes the Town stated it would provide more responsive records when gathered.

As a result, on August 4, 2022, Smith filed a formal complaint alleging Pendleton violated APRA by failing to comply with the law's reasonable time standard.

Specifically, Smith argues the requested documents were statutorily required to be created before the Town adopted the Impact Fee Ordinance over a year ago.²

On August 24, 2022, the Town, through attorney Jeffrey Graham, filed a response denying any violation of APRA. Notably, the Town acknowledges the requested records are subject to disclosure and a significant amount of time has gone by since receiving the request. The Town asserts, however, that Smith's request was voluminous; and thus, would take time to fulfill.

It is worth mentioning that the Town committed to providing Smith with a significant amount of the requested records by September 12, 2022. Additionally, the Town noted it would complete its response by September 30, 2022.

On September 14, 2022, Smith informed this office that the Town failed to provide additional documents responsive to her request.

ANALYSIS

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

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. Further, 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

² Ind. Code §§ 36-7-4-1315, and 1338.

public officials and employees, whose duty it is to provide the information.” *Id.*

The Town of Pendleton (Town) 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 Town’s public records during regular business hours. Ind. Code § 5-14-3-3(a). Indeed, APRA contains mandatory exemptions and discretionary exceptions to the general rule of disclosure. *See* Ind. Code § 5-14-3-4(a) to -(b).

2. Reasonable time

APRA requires a public agency to provide public records to a requester within a reasonable time after receiving a request. Ind. Code § 5-14-3-3(b). Notably, APRA does not define the term “reasonable time.”

The determination of what is a reasonable time for production depends on the public records requested and circumstances surrounding the request. Undoubtedly, certain types of records are easier than others to produce, review, and disclose. As a result, this office evaluates these issues case by case.

Here, the request is large, but that does not necessarily disqualify it from legitimacy. The Town—at least initially—decides whether a public records request (or portions of it) lack the specificity required by APRA. Still, the Town did not argue that Smith’s request failed to meet APRA’s “reasonable particularity” standard.³

³ Ind. Code § 5-14-3-3(a)(1).

Therefore, accepting a request, even of significant magnitude, shifts the burden to the public agency for an efficient, reasonable response under APRA. This office has stated in the past that piecemeal disclosures of larger requests are preferable compared to waiting for the entirety of the records to become available.⁴

Judging by the relative size and complexity of the request, it may have taken several months to ultimately retrieve and disclose all the requested records. Even so, the Town waiting months before releasing the first document is not reasonable by any objective standard. This office encourages the Town to maintain practical haste when responding to public records requests. Moreover, Pendleton should, as it promised, finish the task by September 30, 2022.

⁴ *Opinion of the Public Access Counselor*, 15-FC-88 (2015).

CONCLUSION

Based on the foregoing, it is the opinion of this office that the Town of Pendleton took an unreasonable amount of time to fulfill—even partially—the public records request in question in this case.



Luke H. Britt
Public Access Counselor

Issued: September 21, 2022