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**OPINION OF THE PUBLIC ACCESS COUNSELOR**

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THADDEUS F. RADZIWIIECKI,  
*Complainant,*

v.

TOWN OF HIGHLAND,  
*Respondent.*

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Formal Complaint No.  
22-FC-66

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Luke H. Britt  
Public Access Counselor

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BRITT, opinion of the counselor:<sup>1</sup>

This advisory opinion is in response to a formal complaint alleging the Town of Highland violated the Access to Public Records Act.<sup>2</sup> Attorney John Reed 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

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<sup>1</sup> Mr. Thomas Woodring, PAC intern, assisted in the development of this opinion.

<sup>2</sup> Ind. Code § 5-14-3-1-10.

by the Office of the Public Access Counselor on April 26, 2022.

### **BACKGROUND**

This case involves a dispute about whether the Town of Highland (Town) complied with the Access to Public Records Act's (APRA) reasonable time standard.

On April 11, 2022, and April 13, 2022, Thaddeus Radziwiecki (Complainant) hand delivered four public records requests with the Town seeking the following:

1. Registration and Application Forms (HMC 5.05.030) for any/all contractor(s) (HMC 5.20.020) doing business for the construction of the Highland Police Station at 3333 Rids Road for the calendar years of 2014 and 2015
2. Insurance Policy (HMC 5.20.130) for any/all contractor(s) (HMC 5.20.020) doing business for the construction of the Highland Police Station at 3333 Ridge Road for the calendar years of 2014 and 2015.

On April 22, 2022, Radziwiecki filed a formal complaint with this office alleging the Town violated APRA. Radziwiecki contends that he received no communication from the Town within 24 hours of the request. Ten days after the initial request, Radziwiecki asserts that he still had not been contacted by the Town.

After filing his complaint, Town attorney John Reed reached out to Radziwiecki. Reed argues that because the request involves multiple agencies, the time necessary to procure the documents is longer than usual.

On July 15, 2022, Radziwiecki contacted this office with an update that despite communications with the Town, over 90 days had passed since the original request and no documents have been procured.

At the time of this opinion, Radziwiecki has yet to receive the documents requested.

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

The Town of Highland 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. Public Agency’s Response to a Request

APRA requires a public agency to respond to a public records request within 24 hours of receiving the request for a

record from a person who is physically present in the agency office. *See* Ind. Code § 5-14-3-9(b). Without a response from the agency, the request is denied by operation of law.

“Response” is not defined under APRA; however, a public agency is not required to produce the requested records within the period outlined in APRA. Only an oral acknowledgment must be made when a request is hand delivered to an agency. In other words, if Radziwiecki handed the requests to an employee at town hall, the physical interaction between live persons constitutes an acknowledgment under APRA.

### **3. 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, Radziwiecki and the Town of Highland disagree about whether the agency complied with APRA’s reasonable time standard by not fulfilling the request within three months. After more than 90 days, there is no evidence that the Town fulfilled the request. The Town seemingly should have had ample time to fulfill this request during the three months since the request was submitted. Despite the

involvement of multiple agencies needed to fulfill the request, three months is more than enough time to fulfill Radziwiecki's request.

### **CONCLUSION**

Given that more than 90 days have passed since the initial request and the relative simplicity of the documents requested, the Town of Highland has exceeded a reasonable time to produce the records requested by Radziwiecki.

As such, the Town of Highland should immediately provide the records to the Complainant upon receipt of this opinion.



Luke H. Britt  
Public Access Counselor

Issued: July 28, 2022