
OPINION OF THE PUBLIC ACCESS COUNSELOR

DERRICK DOUGHERTY,
Complainant,

v.

VERMILLION COUNTY,
Respondent.

Formal Complaint No.
24-FC-35

Luke H. Britt
Public Access Counselor

BRITT, opinion of the counselor:

This advisory opinion is in response to a formal complaint alleging Vermillion County violated the Access to Public Records Act.¹ Attorney Jon Spurr filed an answer on behalf of the County. 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 April 29, 2024.

¹ Ind. Code § 5-14-3-1-10.

BACKGROUND

In this case, we consider whether Mr. Derrick Dougherty (Complainant) was wrongfully denied the County's Request for Proposals (RFP) for ambulance services.

On April 6, 2024, Mr. Dougherty requested the ambulance RFP via email to Commissioner RJ Dunavan. Mr. Dougherty proceeded to ask for an update on April 10, and Commissioner Dunavan responded the same day, writing he was waiting for another Commissioner, Britton Luther, to send the RFP.

Again, on April 12, 2024, Mr. Dougherty requested for the RFP twice over email. Absent a response, Mr. Dougherty filed a formal complaint on April 29, 2024, alleging that he was wrongfully denied access to the RFP for the ambulance contract with the County. Dougherty offers alternative reasoning as to why the RFP should be made public, but that rationale is outside the scope of what this office can consider.

In response to Dougherty's complaint, the County contends he did not use the proper form or process for requesting the record. His request was misconstrued as inserting himself into the bidding process on behalf of another entity and not treated as a public records request.

ANALYSIS

1. The Access to Public Records Act

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. The Vermillion County Board of Commissioners is a public agency for the purposes of APRA; and therefore, is subject to 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 Vermillion County Board of Commissioners’ public records during regular business hours. Ind. Code § 5-14-3-3(a).

However, the agency may reject requests for falling outside of the reasonable particularity standard or failing to use the requested form at the discretion of the agency. *See* Ind. Code § 5-14-3-3(a)(1-2).

2. Burden upon the requester

Under APRA the requester only has two major burdens:

- (1) Identify with reasonable particularity the record being requested; and
- (2) Be, at the discretion of the agency, in writing on or in a form provided by the agency.

Ind. Code § 5-14-3-3(a)(1-2). Vermillion County argues that the Complainant did not file using the provided forms in

contrast to his prior requests for records by the same Complainant. The provided correspondence between the board members and the Complainant corroborates the fact that Mr. Dougherty did not use this form.

Additionally, it is the job of the requester to ensure their request is sent to the appropriate public agency. The Vermillion County Board clarifies that Commissioner Dunavan nor Commissioner Luther would be the custodian of the RFP. Instead, the County Auditor is the clerk for the county executive as pursuant to Ind. Code § 36-2-9-7.

Even still, the Commissioners did not give Dougherty any indication his casual request was insufficient. The email immediately responding to him informally indicated to Dougherty that his request was accepted. The thread reads as follows:

DOUGHTERY: Hey [County Commissioner RJ Dunavan], Would you shoot me the ambulance RFP when it gets released? Thanks so much in advance! Derrick

DUNAVAN: Yes, it was sent out earlier this week. I'll see if [Commissioner] Luther sent me a copy and get you a copy Thank you, respectfully Vermillion County Commissioner, Rj Dunavan

This exchange indicates that the County accepted Dougherty's request. While it is well taken that the process and form should be followed, the Commissioner gave Dougherty the impression that it would be provided. To be sure, if Dunavan told Dougherty to go through the Auditor's office and use a form, that would have been justified.

Alternatively, the materials could have been provided through this process as well. It is unknown if Dougherty has received the RFP (in whatever form it took), but absent any other exemptions to disclosure, he would be entitled to it.

CONCLUSION

Based on the foregoing, it is the opinion of this office that the Vermillion County Board of Commissioners should provide the document to the Complainant, if it has not done so already. In the future, the County can also insist that a form be completed and routed through the appropriate office.

A handwritten signature in black ink, appearing to read 'LH Britt', with a stylized flourish at the end.

Luke H. Britt
Public Access Counselor

Issued: July 16, 2023