



STATE OF INDIANA

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September 12, 2013

Mr. Robert W. Edinger
1484 N. 700 E.
Elwood, IN 46036

Re: Formal Complaint 13-FC-236; Alleged Violation of the Access to Public Records Act by the Tipton County Auditor

Dear Mr. Edinger,

This advisory opinion is in response to your formal complaint alleging the Tipton County Auditor, Mr. Gregg Townsend, ("Auditor") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et. seq.* Mr. John H. Brooke, Esq., responded on behalf of the Auditor. His response is enclosed for your reference. Pursuant to Ind. Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on August 14, 2013.

BACKGROUND

Your complaint alleges that the Tipton County Auditor violated the Access to Public Records Act by not releasing records in a timely manner in violation of Ind. Code § 5-14-3-3(b).

Both parties agree that you submitted several requests for documents on June 20, 2013. Specifically you were seeking records relating to the landscaping bid for the County courthouse from March of 2013; the 2012-2013 wind farm expense fund; and the 0212-2013 redevelopment commission fund. The Tipton County auditor responded that same day advising you that the office would investigate the existence of those records and release as appropriate.

Both parties agree that the records have been disclosed to you after the filing of the complaint.

ANALYSIS

The public policy of the 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.” See Ind. Code § 5-14-3-1. The Tipton County auditor’s office is a public agency for the purposes of the APRA. See Ind. Code § 5-14-3-2(n)(1). Accordingly, any person has the right to inspect and copy the Auditor’s public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. See Ind. Code § 5-14-3-3(a).

A request for records may be oral or written. See Ind. Code § 5-14-3-3(a); § 5-14-3-9(c). If the request is delivered in person and the agency does not respond within 24 hours, the request is deemed denied. See Ind. Code § 5-14-3-9(a). If the request is delivered by mail or facsimile and the agency does not respond to the request within seven (7) days of receipt, the request is deemed denied. See Ind. Code § 5-14-3-9(b). A response from the public agency could be an acknowledgement that the request has been received and information regarding how or when the agency intends to comply.

Your letter was received by the Auditor on June 20, 2013. The response by the Auditor on June 20, 2013 was served and is deemed timely. In his response, provided for your review, counsel for the Auditor alleges that the delay in response was due to the capacity of the Auditor’s office and large influx of public records requests submitted in 2013.

Indeed it is recognized that counties and municipalities the size of Tipton may lack the personnel and resources to immediately respond to a records request. The APRA provides that public agencies must disclose records within a reasonable time. See Ind. Code § 5-14-3-3(b). The law does not define reasonable and the statute is left vague so that the Public Access Counselor can make a determination on a case-by-case basis. In the current case, this office has been advised that some of the records you requested were less accessible than others. As to those records, it is justifiable that the time taken to release that documentation is reasonable. It is well stated in previous Advisory Opinions that the best and most efficient way of handling large requests is by releasing the records in a piecemeal manner as they become available. This was not done in this case despite some of the records being more readily available than others.

It is critically important that public agencies adhere to the spirit of transparency by disclosing requested documents in a timely and efficient manner. It is also crucial that agencies discharge the duties of their office effectively. The responsiveness of each agency may differ greatly based on their size and the complexity of a public records request. The time period of June 20, 2013 and August 14, 2013 should be more than an adequate amount of time to release records that are relatively accessible. At the very least, public agencies should advise a requestor of the status of their request even if the records are not yet available. This assures the individual seeking the records that their request is being investigated. This approach is consistent with the APRA. Public agencies should be mindful of the importance of communicating the reasons behind a delay in

responsiveness if the records are not readily available at the time of the request. The Tipton County Auditor did not do so in the present case.

Despite the delay, the Auditor did release all the records to you after the filing of this complaint. As such, there is no violation of the APRA for failing disclose the records. It is determined, however, that there was a violation as to timeliness of the response.

CONCLUSION

For the foregoing reasons, it is the Opinion of the Office of the Public Access Counselor that the Tipton County Auditor violated the APRA in regard to timeliness but did not violate the APRA as to the eventual disclosure of the records.

Regards,

A handwritten signature in black ink, appearing to read 'LHB', with a long, sweeping underline that extends to the left and then curves back under the signature.

Luke H. Britt
Public Access Counselor

cc: John H. Brooke