



STATE OF INDIANA

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January 2, 2014

Mr. Charles R. Moon
703 E. Swayze St.
Marion, IN 46952

Re: Formal Complaint 13-FC-340; Alleged Violation of the Access to Public Records Act by the Marion City Council

Dear Mr. Moon,

This advisory opinion is in response to your formal complaint alleging the Marion City Council ("Council") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et. seq.* The Council responded to your complaint via Mr. Phillip E. Stephenson, Esq., Council Attorney. His response is enclosed for your review. 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 December 12, 2013.

BACKGROUND

Your complaint alleges the Marion City Council violated the Access to Public Records Act by denying producing records responsive to your request.

On November 5, 2013 during a City Council meeting, Councilman Fred Troxell commented on a proposal by a contractor to sell equipment for less than the City's current lease agreement. On November 19, 2013, you submitted to the Council a public records request seeking the following documents:

A copy of the price for trucks, beds and snow plows for the Marion Street Department Mr. Troxell quoted in the Council meeting...also the name of the contractor he reported the information came from.

You have also submitted documentation reflecting subsequent conversations with Mr. Troxell, wherein he allegedly refused to provide you with the name of the contractor or exact specifics of the referenced quote. From the meeting minutes you have provided, no other Councilperson commented on the quote as having first-hand knowledge of any pricing schedules.

In its response, the City argues that Mr. Troxell acted unilaterally in engaging a contractor to obtain potential truck pricing and no documentation exists memorializing that conversation in writing; therefore no public records exist.

ANALYSIS

The public policy of the APRA states that “a (p) roviding person 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 Marion City Council 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 Council’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 the request has been received and information regarding how or when the agency intends to comply.

From the information provided, it appears as if the information obtained by Councilman Troxell from a contractor was oral. Conversations, unless recorded, are not public record. Moreover, it appears Councilman Troxell acted independently of the Council in obtaining the pricing. As the Council’s response points out, it is acceptable for individual Councilors to do research into public business independently. Only when a quorum of Council members discusses public business does it become subject to public observation and scrutiny. Nothing in the information provided indicates Councilman Troxell was attempting to subvert public access by having the conversation.

Likewise, it has long been the position of the Public Access Counselor that records do not have to be created to satisfy a public records request. If there was no memorialization of the conversation, written or recorded, then a public record of the conversation simply does not exist. Public agencies are not required to generate documentation of every conversation or interaction. If a public record does not exist, there is nothing to disclose.

CONCLUSION

For the foregoing reasons, it is the Opinion of the Public Access Counselor the Marion City Council did not violate the Access to Public Records Act.

Regards,

A handwritten signature in black ink, appearing to be 'LHB', written in a cursive style.

Luke H. Britt
Public Access Counselor

Cc: Mr. Phillip E. Stephenson, Esq.