



# STATE OF INDIANA

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April 29, 2014

Mr. Jim J. Brugh, Esq.  
1315 East Market St.  
Logansport, IN 46947

*Re: Formal Complaint 14-FC-67; Alleged Violation of the Access to Public Records Act by the Mayor and Clerk-Treasurer of Logansport*

Dear Mr. Brugh,

This advisory opinion is in response to your formal complaint alleging the Mayor and Clerk-Treasurer of Logansport ("City") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et. seq.* The City has provided a response to your complaint via Mr. John Molitor, Esq.. The City's response is attached 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 March 28, 2014.

## BACKGROUND

Your complaint dated March 26, 2014 alleges the Mayor and Clerk-Treasurer of Logansport violated the Access to Public Records Act by not providing records responsive to your request in violation of Ind. Code § 5-14-3-3(a) in that the production of documents was not organized in a serviceable fashion.

Between January 23, 2014 and January 28, 2014, you requested of the Mayor and Clerk-Treasurer a fairly significant amount of documents relating to several ordinances and resolutions, claims and disbursements. After a timely acknowledgement, you were provided the records on February 24, 2014. Over twelve hundred documents were produced. You state the records were produced to you in a "disorganized, haphazard, unintelligible manner". You have provided copies of these documents to me presumably in the same manner they were received.

On February 25, 2014, you wrote a letter to the City Attorney requesting the City to re-organize the documents in a manner consistent with Indiana Trial Rule 34(B) which states:

“Unless the parties otherwise agree, or the court otherwise orders, a party who produces documents for inspection shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the request.”

After receiving no response, you filed your formal complaint with my office shortly thereafter. The basis of your formal complaint is greatly concerned with the manner in which the documents were produced. There is not an allegation the records were not responsive to your request, but rather they were produced in a manner unacceptable to you.

### 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 Mayor and Clerk-Treasurer of Logansport 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 City’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).

Other than the local government retention schedule, the manner in which a public agency maintains public records is beyond the scope of my control. You assert the production was non-responsive due to the nature in which they were produced. You do not allege any of the documents are missing or unacceptably redacted.

The Indiana Trial Rules do not apply to the Office of the Public Access Counselor’s complainants or respondents. When I consider it constructive, I will use the Trial Rules and other administrative rules as a guideline or persuasive authority, but not as a basis for a violation. As I have stated *ad nauseum*, evidentiary discovery and the Access to Public Records Act are mutually exclusive. While this Office is the exhaustion of administrative remedies before judicial review, I am not an administrative law judge or hearing officer and therefore, neither the Trial Rules nor the Administrative Orders and Procedures Act apply to the quasi-adjudicative formal complaint process.

So while I cannot find a violation on the part of the City for its method of production, I can surely make recommendation as to best practices. This is part of my duty as *Counselor*. I agree with the spirit of your complaint and your arguments and have subsequently counseled the City accordingly. I believe a response to a public records request should be organized and easily digestible. The Trial Rules are appropriate guidance to satisfy this; however, any manner of orderliness should suffice. I encourage public agencies to extend a courtesy to their constituents by presenting records in a orderly fashion. I have reviewed the records you have provided to my Office and I do not find them to be so cluttered as to be restricting access. If they were ripped, torn, crumpled or muddled in any other way, I may have a different view on the matter. But they do not

appear to be unintelligible as you suggest, merely disordered to the point you may have to take some time putting them together in an arrangement suitable to your needs.

### **CONCLUSION**

For the foregoing reasons, it is the Opinion of the Indiana Public Access Counselor the Mayor and Clerk-Treasurer of Logansport have not violated the Access to Public Records Act.

Regards,

A handwritten signature in black ink, appearing to read 'LH Britt', with a long, sweeping underline.

Luke H. Britt  
Public Access Counselor

Cc: Mr. John Molitor, Esq.