



STATE OF INDIANA

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May 23, 2014

Mr. Benjamin W. Conner
302 S. Sycamore St.
Odon, IN 47562

Re: Formal Complaint 14-FC-89; Alleged Violation of the Access to Public Records Act ("APRA") by the Odon Town Council

Dear Mr. Conner,

This advisory opinion is in response to your formal complaint alleging the Odon Town Council ("Council") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et. seq.* The Council has not provided a response despite being invited to do so on April 23, 2014. 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 April 23, 2014.

BACKGROUND

On April 21, 2014 you made an in person request to the Odon Town Council at their public meeting. You requested certain emails relating to the rental of the community center building. You served each councilmember a copy of the request after which the town attorney advised you a response would be forthcoming. As of the filing of your formal complaint, you had not received any documentation from the Council. I also confirmed on the date of this Opinion you had not received anything yet. I have not been provided a response from the Council.

DISCUSSION

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 Odon Town 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.

I consider the acknowledgement by the Council's attorney to satisfy the requirement of Ind. Code § 5-14-3-9(a). The Council would then have a reasonable time to produce the documents pursuant to Ind. Code § 5-14-3-3(b). While your formal complaint may have been a bit premature after two days, it is certainly concerning you have not received any update as of May 23 – especially given the attorney's promise to follow up.

If an agency knows a search may take a significant amount of time (email searches typically do) they should be in contact with the requestor to give assurances their request is still being considered. Without the benefit of a response from the Council, I cannot determine if justification exists for the delay or their reasoning for not responding to you.

CONCLUSION

For the foregoing reasons it is the Opinion of the Public Access Counselor the Odon Town Council has acted contrary to the Access to Public Records Act.

Regards,

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

Luke H. Britt
Public Access Counselor