



STATE OF INDIANA

MICHAEL R. PENCE, Governor

PUBLIC ACCESS COUNSELOR
LUKE H. BRITT

Indiana Government Center South
402 West Washington Street, Room W470
Indianapolis, Indiana 46204-2745
Telephone: (317)234-0906
Fax: (317)233-3091
1-800-228-6013
www.IN.gov/pac

September 16, 2016

Ms. Denise Brewer
316 Halcyon Road
Charlestown, Indiana 47111

Re: Formal Complaint 16-FC-190; Alleged Violation of the Access to Public Records Act by the City of Charlestown

Dear Ms. Brewer:

This advisory opinion is in response to your formal complaint alleging the City of Charlestown ("City") violated the Access to Public Records Act ("APRA"), Indiana Code § 5-14-3-1 et. seq. The City has responded via City Attorney, Mr. Michael A. Gillenwater, Esq. His response is enclosed for your review. Pursuant to Indiana 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 5, 2016.

BACKGROUND

Your complaint dated August 5, 2016, alleges the City of Charlestown violated the Access to Public Records Act by failing to produce the records you requested. On or about June 27, 2016, you submitted a 14-part public records request to the City. Due to its length and for illustration, the records request has been attached and published with this opinion. On July 5, 2016, the City responded by stating the request was overly broad and not specific and invited you to narrow your request. This argument was reiterated in the City's response to your formal complaint as well.

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 Indiana Code § 5-14-3-1*. The City of Charlestown is a public agency for the purposes of the APRA. *See Indiana Code § 5-14-3-2(n)(1)*. Accordingly, any person has the right to inspect and copy the City's disclosable public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. *See Indiana Code § 5-14-3-3(a)*.

A request for records may be oral or written. *See Indiana Code § 5-14-3-3(a); § 5-14-3-9(c)*. 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 Indiana 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.

The one obligation on the part of a requester of public records is that they identify the documents they are seeking with specificity. Indiana Code § 5-14-3-3 states: A request for inspection or copying must identify with reasonable particularity the record being requested. The definition of 'reasonable particularity' has been debated ad nauseum and addressed by this Office many times. "Particularity" as used in the APRA is defined as "the quality or state of being particular as distinguished from universal." *Merriam-Webster Online, www.m-w.com*.

Using the terms "each, any, and all" is usually (although not always) an indication a requester may or may not be aware something exists. For example, there may be a memo between the mayor and the city council on a certain issue, but there is no actual evidence it actually exists. So a requester will use the public access act to 'investigate' a matter by submitting a request lacking in detail hoping it may yield a document to serve their purpose. This is not the purpose of the Access to Public Records Act.

A specific request will give search parameters identifying a document with some kind of tangible accuracy. You may be aware of set of emails sent between a named council member and a department head during a set period of time regarding an identified subject. So long as you identify those elements, a search may reasonably be conducted. But with your request, you have asked for any documents which could possibly exist about a given subject for a five (5) year period. This would require the municipality to solicit information from an indefinite amount of personnel or public officials and produce documents which may or may not even exist.

Furthermore, the majority of the information you seek is deliberative in nature. Indiana Code § 5-14-3-4(b)(6) gives public agencies the discretion to withhold deliberative materials which are defined as:

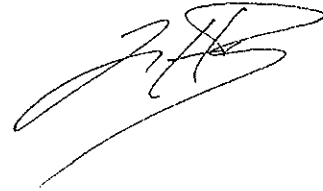
Records that are intra-agency or interagency advisory or deliberative material, including material developed by a private contractor under a contract with a public agency, that are expressions of opinion or are of a speculative nature, and that are communicated for the purpose of decision making.

Generally, I counsel public agencies to be judicious in exercising its discretion to withhold deliberative materials, however, it appears to be justified in this case. I recommend you narrow your request being mindful some of the material you seek may indeed be considered 'deliberative.'

CONCLUSION

Based on the forgoing, it is the opinion of the Public Access Counselor the City of Charlestown has not violated 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. Michael A. Gillenwater, Esq.

Attachment 1

**Access to Public Records Act
June 27, 2016 Request**

June 27, 2016

Via U.S. Mail

City of Charlestown
304 Main Cross St.
Charlestown, IN 47111
Attn: Donna Coomer
City Clerk Treasurer

Re: Public Records Request of Denise Brewer

Dear Ms. Coomer,

Pursuant to Indiana's Access to Public Records Act (APRA), Ind. Code §§ 5-14-3-1 *et seq.*, I request a copy of the following public records:

1. **Each, any, and all documents pertaining to, relied upon for, related to, or underlying the preparation of City of Charlestown Resolution No. 2016-R-001, attached to this request as Attachment A.**
2. **Each, any, and all documents pertaining to, relied upon for, related to, or underlying the preparation of City of Charlestown Ordinance 2016-OR-02, attached to this request as Attachment B.**
3. **Each, any, and all documents pertaining to, relied upon for, related to, or underlying the preparation of City of Charlestown Resolution No. 2016-R-002, attached to this request as Attachment C.**
4. **Each, any, and all documents pertaining to, relied upon for, related to, or underlying any plan or draft plan developed pursuant to Indiana Code § 36-7-14-15, created on or after January 1, 2016.**
5. **To the extent such documents have not been provided in response to the requests above, if the City of Charlestown or any employee, agent, or representative of the City of Charlestown, has retained an outside redevelopment consultant to compile any data, draft any plans or studies, create maps, or any other documents related to redevelopment, I request copies of each, any, and all documents related to redevelopment that the outside consultant has created or compiled since January 1, 2011. This request includes documents that the consultant has already provided the City of Charlestown as well as documents that are presently in the possession of the consultant but are contractually under the ownership or control of the City of Charlestown. It is not acceptable for the City of Charlestown to refuse to turn over documents it owns or controls on the ground that those documents are not presently in its physical possession.**
6. **To the extent such documents have not been provided in response to the requests above, if the City of Charlestown or any employee, agent, or representative of the City of Charlestown, has retained an outside redevelopment consultant to compile any data, draft any plans or studies, create maps, or prepare other documents related to redevelopment, I request copies of each, any, and all**

City of Charlestown
City Clerk Treasurer
Page 2

- documents created on or after January 1, 2011, related to the retention of that outside consultant, including any (i) contracts between the City of Charlestown or any employee, agent, or representative of the City of Charlestown and the consultant, (ii) resolutions or ordinances appropriating funds to pay the consultant, (iii) documents related to the decision to retain the consultant, (iv) documents related to the negotiations between the City of Charlestown or any employee, agent, or representative of the City of Charlestown and the consultant about the scope of the work, and (v) the fees and costs for performing that work.
7. To the extent such documents have not been provided in response to the requests above, if the City of Charlestown or any employee, agent, or representative of the City of Charlestown has retained an outside redevelopment consultant to compile any data, draft any plans or studies, create maps, or prepare other documents related to redevelopment since January 1, 2011, I request copies of each, any, and all documents that were provided the consultant, either at the City of Charlestown or any employee, agent, or representative of the City of Charlestown's initiative or the consultant's request. For the purposes of this request, you are requested to ask each specific individual who was asked to provide documents to the outside consultant to respond to this request with each specific document that that person provided the outside consultant.
 8. To the extent such documents have not been provided in response to the requests above, I request copies of each, any, and all documents created since January 1, 2011, containing property-by-property data identifying features of properties within the City of Charlestown relevant to the issue of redevelopment. These documents may include, for example, spreadsheets showing building code violations for each property or they may be reports on each property. This request also includes summaries of property-by-property data as well as the underlying property-by-property data itself.
 9. To the extent such documents have not been provided in response to the requests above, I request copies of each, any, and all documents created since January 1, 2011, containing information about crime rates in the City of Charlestown, either for the town as a whole or for the areas targeted for redevelopment. This request includes documents summarizing crime rates, as well as documents with the underlying data, including property-by-property data on crime rates. This request also includes documents related to police visits to properties that may not have uncovered a crime, but generated a police visit for some reason.
 10. To the extent such documents have not been provided in response to the requests above, I request copies of each, any, and all documents created since January 1, 2011, containing information about real estate prices in the City of Charlestown, including real estate pricing trends in the town as a whole as well as areas targeted for redevelopment. This request includes documents that summarize real estate data as well as documents containing the underlying data.
 11. To the extent such documents have not been provided in response to the requests above, I request each, any, and all documents created since January 1, 2011, containing information about economic data and trends in Charlestown,

City of Charlestown
City Clerk Treasurer
Page 3

including employment rates, issuance of building permits and business licenses, regional economic development outside of the City of Charlestown that will affect the City of Charlestown, and any other relevant document. This request includes documents that summarize economic data and trends, as well as the underlying data.

- 12. To the extent that such documents have not been provided in response to the requests above, I request each, any, and all documents created since January 1, 2011, containing information about demographic data and trends in the City of Charlestown. This request includes summaries of demographic data and trends, as well as the underlying data.**
- 13. To the extent that such documents have not been provided in response to the requests above, I request each, any, and all documents created since January 1, 2011, containing information about public-works expenditures in Charlestown, including documents related to public-works expenditures that Charlestown believes is related to the need for redevelopment. This request includes summaries of public-works expenditure data as well as the underlying data.**
- 14. To the extent that such documents have not been provided to the requests above, I request each, any, and all documents created since January 1, 2011, related to, concerning, or underlying any actual, proposed, or contemplated increase in zoning enforcement by the City of Charlestown.**

For purposes of this request, the term "documents" should be construed in the broadest sense to include letters, memoranda, facsimiles and facsimile cover sheets, completed ticketing forms, telephone message logs, emails, calendar entries, tapes/CDs/DVDs, transcripts, meeting notes, and any other responsive materials. Such documents should be included regardless of their source, including personal computers, cell phones, or other means of communications used by City of Charlestown personnel to conduct municipal business. In the event that you believe any of the documents requested in this letter may not be disclosed in their entirety, I request that you release any disclosable material that can be segregated. In addition, please state with specificity the legal and factual grounds for withholding any document or portions of a document, including a reasonably detailed description of the material being withheld. While I would prefer electronic files, please provide the materials in the format that allows for the most rapid response possible.

In addition, please ensure that a verbatim copy of our requests is shown to each specific individual within the City of Charlestown who will be asked to respond to these requests so that each individual understands the nature of the request.

APRA provides that "Providing persons with the information [regarding the affairs of government] is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty is to provide the information." Ind. Code § 5-14-3-1. I therefore request full disclosure of the materials requested. Pursuant to APRA, the City of Charlestown has seven (7) calendar days to respond to this request.

I am willing to pay a reasonable statutory fee for the processing of this request. If you are able to provide me with a cost estimate at the beginning of the process, please do so.

City of Charlestown
City Clerk Treasurer
Page 4

I certify that I will not use any records provided for commercial purposes.

Please do not hesitate to call me at 502-303-2309 with any questions you may have or if you require further information.

Sincerely,

Denise Brewer
316 Halcyon Road
Charlestown, IN 47111

Att.