



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

May 5, 2016

Mr. Daniel Barton
The New Harmony Gazette
505 Main Street
Post Office Box 551
New Harmony, Indiana 47631

Re: Formal Complaint 16-FC-72; Alleged Violation of the Access to Public Records Act by the Working Men's Institute

This advisory opinion is in response to your formal complaint alleging the Working Men's Institute ("Institute"); Director Ryan Rokicki and Vice President Nathan Maudlin violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 et. seq. The Institute has responded via Mr. Rokicki. 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 March 28, 2016.

BACKGROUND

Your complaint dated March 23, 2016, alleges the Working Men's Institute violated the Access to Public Records Act by improperly denying your records request.

On March 15, 2016, you requested a copy of a feasibility study conducted on behalf of the Institute by a third-party contractor. Your request was denied because the Trustees needed time to review the assessment. On March 22, 2016 you renewed your request which was again denied. You served a third request in writing and have not received a response.

On April 2, 2016 the Institute responded, asserting the study is considered deliberative material under Ind. Code 5-14-3-4(b)(6). The Institute contends they will be released when they are 'finalized'.

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 Working Men's Institute 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 Institute's disclosable 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 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. A denial of disclosure by a public agency also occurs when the person making the request is physically present in the office of the agency (i.e. hand-delivery), makes the request by telephone, or requests enhanced access to a document and twenty-four (24) hours elapse after any employee of the public agency refuses to permit inspection and copying of a public record when a request has been made.

You were twice told the records were not available for disclosure because the Institute had not reviewed the assessment. Lack of review of records is not grounds for a denial alone but it is also not a denial. Instead, it appears the Institute was merely informing you a delay would occur before it could decide whether to disclose records to you. On the other hand, such a delay can turn into a denial if the agency failed to provide you with a determination within an appropriate timeframe. A public agency must release its records in a 'reasonable time' pursuant to Ind. Code § 5-14-3-3. Review of a document can be part of that timeframe.

In this case, informing you the Institute needed time to review the study constituted a permissible delay; it did not deny your request. A feasibility study could indeed be considered deliberative under Ind. Code § 5-14-3-4(b)(6) and therefore necessitate review.

Please do not hesitate to contact me with any questions.

Regards,

A handwritten signature in black ink, appearing to read 'L. Britt', with a stylized flourish extending from the bottom left.

Luke H. Britt
Public Access Counselor

Cc: Mr. Ryan Rokicki, Esq.