



STATE OF INDIANA

MICHAEL R. PENCE, Governor

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June 2, 2016

Ms. Elizabeth Penn
6635 Pasco Lane
Plainfield, Indiana 46168

Re: Formal Complaint 16-FC-96; Alleged Violation of the Access to Public Records Act by the Morgan County Board of Commissioners

Dear Ms. Penn:

This advisory opinion is in response to your formal complaint alleging the Morgan County Board of Commissioners ("Commissioners") violated the Access to Public Records Act ("APRA"), Indiana Code § 5-14-3-1 et. seq. The Commissioners have responded via counsel, Mr. Rodric D. Bray, 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 April 29, 2016.

BACKGROUND

Your complaint dated April 28, 2016 alleges the Morgan County Board of Commissioners violated the Access to Public Records Act by denying your records request.

On March 21, 2016 you submitted a records request to the Commissioners, seeking meeting minutes discussing health and structural issues in the County. You specifically requested:

[M]inutes from January 2003 to the present regarding the Morgan County courthouse, structural issues, health and safety issues of employees and any improvements, or work done to the courthouse. Additionally, we are requesting copies of any and all reports discussed, referenced or relied upon during those meetings....

You allege that you arranged a time to meet on April 14, 2016 to go over the records and were given access to files, however, you were not satisfied with what was provided to you for inspection. You had made a subsequent request on April 7, 2016 for reports regarding air quality and mold issues in the courthouse.

An April 15, 2016 production of documents satisfied your request for radon tests despite one of the reports possibly being inaccurate and a subsequent test being ordered. An additional report was produced April 20, 2016. Finally on April 24, 2016, you submitted a much more detailed request via email listing specific work done on the courthouse. This request was acknowledged on April 29, 2016, but not before you filed your formal complaint.

On May 10, 2016 the Commissioners responded. The Commissioners assert they have provided records responsive to your request and have given unfettered access to the courthouse maintenance file. Commissioners also note you did not specifically request records until later in the process and your request was quite broad, which created some delay and confusion.

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 Morgan County Board of Commissioners 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 Commissioners’ 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)*.

Under Indiana Code 5-14-3-3(a)(1), “a request for inspection or copying must identify with reasonable particularity the record being requested.” Reasonable particularity is not defined under the APRA. If the public agency cannot determine what records to seek then your request is determined to have lack of reasonable particularity. A public agency is not required to fulfill a request which lacks reasonable particularity.

I note that not only were your initial rounds of requests broad, they lacked reasonable particularity on their face. Your request for thirteen (13) years of records is quite broad and appears to be untenable. You sought board meeting minutes generally related to health and structural issues. This puts the burden on the Commissioners to sort through thirteen (13) years of records and give you specific records you believe are responsive without any method of determining what exact records you are seeking. The vagueness is compounded when you ask for records the Commissioners originally relied on for those meetings. Not until your April 2, 2016 request did you narrow down the records sought with any degree of specificity.

Despite your request’s lack of particularity, the Commissions undertook a search for records. However, you contend the Commissioners did not provide you with all records responsive. This deficiency is likely due to the fact your request lacked reasonable particularity. Instead they opened up the files for your inspection in order that you were able to finally narrow down the search on April 24, 2016. Unfortunately, you filed your complaint before the resolution of the request. Based upon the information provided, however, it appears as if the Commissioners have acted in good faith throughout the process and have been as transparent as possible. While there was an off-the-cuff comment by one of the Commissioners about some records being withheld to preserve public perception, it appears as if those records were nevertheless released expeditiously. Judging from the email communication provided to this Office, the Commissioners have not acted with any intent toward opacity. It is my sincere hope the production of records pursuant to your April 24, 2016 request was satisfactory.

CONCLUSION

Based on the forgoing, it is the opinion of the Public Access Counselor the Morgan County Commissioners did not violate the Access to Public Records Act.

Regards,

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

Luke H. Britt
Public Access Counselor

Cc: Mr. Rodric D. Bray, Esq.