
OPINION OF THE PUBLIC ACCESS COUNSELOR

JAMES METRO,
Complainant,

v.

TOWN OF CEDAR LAKE,
Respondent.

Formal Complaint No.
17-FC-142

Luke H. Britt
Public Access Counselor

BRITT, opinion of the Counselor:

This advisory opinion is in response to the formal complaint alleging the Town of Cedar Lake (“Town”) violated the Access to Public Records Act (“APRA”). Ind. Code §§ 5-14-3-1–10. The Town responded by and through the Town Administrator Jill Murr. In accordance with Indiana Code § 5-14-5-10, I issue the following opinion to the formal complaint received by the Office of the Public Access Counselor on June 23, 2017.

BACKGROUND

On April 27, 2017, James Metro (“Complainant”) submitted a records request Town seeking “all records from January 2014 through March 31, 2017” that:

- “Evidence payments made or expenses incurred in the annexation of the property described in Ordinance 1212A;”and
- Includes “evidences of payments made to attorneys, accountants, engineers, consultants, or others engaged by the Town of Cedar Lake, in furtherance of the proposed annexation;”and
- “Records disclosing any out of pocket expenses incurred directly by the Town of Cedar Lake, including but not limited to copying or printing charges, incurred in furtherance of the proposed annexation.”

Mr. Metro noted in his request that his intent was to acquire enough records from the Town to ascertain the total cost incurred by the Town in pursuing the annexation during the specific time frame included with the request.

On June 5, 2017, the Town denied the Complainant’s request for a lack of reasonable particularity. The Town also stated that because the Complainant was a board member of an organization that was involved with litigation with the Town, the request for records should go through the court.

On June 23, 2017, Metro filed a formal complaint with my office by and through Counsel Stephen R. Buschmann. Mr. Buschmann stated that the litigation referenced in the Town’s denial letter had been disposed of, as final judgment

was entered on February 21, 2017; and thus, “no further discovery would be permitted in the case.” My Office notified the Town of the complaint on June 23, 2017. The Town issued a response on July 7, 2017. The Town contends that the Complainant’s request did not meet “the reasonable particularity–specificity requirement” and that the Town’s denial was drafted upon advice received from my Office and “reviewed by Counselor Britt prior to being sent to Mr. James Metro on June 5, 2017.”

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.” Ind. Code § 5-14-3-1. The Town of Cedar Lake is a public agency for the purposes of the APRA. Ind. Code § 5-14-3-2(n). So, any person has the right to inspect and copy the Town’s public records during regular business hours unless the records are exempt under the APRA. Ind. Code § 5-14-3-3(a).

Reasonable Particularity

The crux of the Town’s denial in this case is that the Complainant’s request was not reasonably particular as mandated by APRA.

Any public records request, whether oral or written, must identify with *reasonable particularity* the record being requested. Ind. Code § 5-14-3-3(a)(1). Although the term *reasonable particularity* is not defined under APRA, I and previ-

ous Public Access Counselors have opined that where a public agency cannot ascertain what records a person is seeking, the request likely has not been made with reasonable particularity. Still, the public policy of APRA favors disclosure and places the burden of nondisclosure on the public agency. That said, determining whether a records request has been made with reasonable particularity is decided on a case-by-case basis.

Here, as set out above, the Complainant submitted a written request seeking records over a three year period of time pertaining to the expenses the Town incurred in connection with a 2014 proposed annexation of certain property. As an initial matter, the scope of the request spans a time frame of more than three calendar years. Although a large window of time is not necessarily fatal to the reasonable particularity inquiry, the more sprawling the time frame becomes the more likely the request is moving away from being reasonably particular.

Another red flag that suggests a request may be lacking reasonable particularity is the use of language like “any” or “all.” Usually—but not always—this shows that person is speculating that a record *may* exist, but cannot pinpoint a document that memorializes the subject matter. To be sure, a person does not need to identify the record with pinpoint accuracy, but there must be enough information in the request to give the public agency more than a mere general idea of what is being requested.

In this case, the Complainant request is not reasonably particular as required by APRA. The Complainant requested “all records from January 2014 through March 31, 2017, which evidence payments made or expenses incurred in the

annexation of property described in Ordinance 1212A.” In addition, Mr. Metro stated that he was seeking records that include payments “in furtherance of” and “in pursuing” the annexation project. Unless the Town maintains a document or record called: *Evidence of Payments Made and Expenses Incurred in furtherance of, and in pursuit, of the Annexation of Property Described in Ordinance 1212A*, it is difficult to know what Mr. Metro is seeking. What’s more, the time frame of the request includes more than three calendar years. In this case, that is unduly broad.

Group Affiliation as Ground for Denial

The Town cited Mr. Metro’s role as a board member of the “No Cedar Lake Annex” organization—a litigant in a lawsuit against the Town—as additional authority for denying his records request. Based on this, the Town invited the Complainant to pursue his request through the court. The Complainant has declined the Town’s invitation.

Metro claims the information he is seeking is not relevant to the annexation litigation because that case has been fully tried and all evidence was submitted at the trial. Specifically, the Complainant contends that because a final judgment has been entered against the Town in the referenced litigation, there will be no further discovery. What’s more, Metro stated that the amounts expended by the Town are not relevant to the issues in that case. It appears the Town has filed an appeal in that case.

Notably, the production of documents under Indiana Trial Rule 34 and the APRA are two mutually exclusive devices to obtain information. Undoubtedly, discovery matters are the exclusive province of the judiciary, not this office. In

other words, if a person is requesting a record that is related to, or will be used in ongoing litigation, then the discovery process is the appropriate vehicle for obtaining the records. Indeed, the discovery process would be frustrated if any executive branch official were to preempt the court's authority by issuing an opinion on the production of documents.

Conversely, in the absence of ongoing civil litigation or criminal proceedings, the discovery rules will not be available. Therefore, APRA is the proper device for seeking public records.

Since the Complainant's request itself is not reasonably particular, I need not weigh in on the issue of whether APRA or the discovery rules govern a records request that may or may not pertain to a case where the trial court has issued a final judgment, and the losing party has filed an appeal from that judgment. That is a discussion for a different day.

CONCLUSION

Based on the foregoing, it is the opinion of the Public Access Counselor that the Town of Cedar Lake has not violated the Access to Public Records Act.

A handwritten signature in black ink, appearing to be 'LH Britt', written in a cursive style.

Luke H. Britt
Public Access Counselor