

---

**OPINION OF THE PUBLIC ACCESS COUNSELOR**

---

THE COURIER-JOURNAL,  
*Complainant,*

v.

CITY OF CHARLESTOWN,  
*Respondent.*

---

Formal Complaint No.  
17-FC-166

---

Luke H. Britt  
Public Access Counselor

---

BRITT, opinion of the Counselor:

This advisory opinion is in response to a formal complaint alleging the City of Charlestown (“City”) violated the Access to Public Records Act<sup>1</sup> (“APRA”). The Complaint was filed by Mr. Jeremy Rogers, the attorney for the Courier-Journal. The City responded to the complaint via Mr. Michael Gillenwater, City Attorney. The response is enclosed for review. In accordance with Indiana Code § 5-14-5-10, I issue

---

<sup>1</sup> Ind. Code §§ 5-14-3-1 to -10.

the following opinion to the formal complaints received by the Office of the Public Access Counselor on July 10, 2017.

### **BACKGROUND**

Reporter Kirsten Clark with the Courier-Journal (“Complainant”) submitted a request for public records on February 14, 2017. The request sought access to all property maintenance code violations, citations and fines issued to a specific firm for a six month period. Alternatively, if such a report was not available, then the requester sought the entire database which was maintained by a third party. The City notified Ms. Clark that no such report was available, and the City invited Ms. Clark to come to City Hall and inspect the electronic database. Ms. Clark accepted this invitation, and she was able to view the database on April 21, 2017, but only with a City employee operating the computer. She then requested a copy of the database. The City employee and the City attorney agreed to copy the database and provide it to her on a USB drive. According to Ms. Clark, when the Complainant provided the USB drive to the City on April 24, 2017, a City employee told her that he “did not know how to provide a copy of the entire database” and that he would ask the database provider about it.

Two days later, on April 26, 2017, this City employee sent a report generated by the provider to Ms. Clark, but this report was allegedly incomplete. On April 28, 2017, Ms. Clark emailed the City employee to notify him that she had spoken with the database provider who told her that the requested data could be provided as a data dump in SQL format. She

provided instructions to the City employee for how to request the raw data from the database provider. The City employee acknowledged her request and forwarded it for review. On May 11, 2017, the City attorney reached out to Ms. Clark and notified her that she needed to be more specific about what she requested. On May 22, 2017, Ms. Clark responded, again providing instructions on how to request the SQL data from the database provider and reiterating her request for “all data contained in the city’s Comcate database pertaining to building code enforcement.” The City attorney responded on May 24, 2017, stating that her “request is being considered inasmuch as it asks that the City provide information in a format which is not currently possessed by the City” and that they would hopefully have a response by June 1 for her. On June 14, 2017, the City denied the request for a copy of the complete database in SQL format. The Complainant filed this formal complaint with my Office on July 5, 2017. This Office notified the City of the Complaint on July 11, 2017.

This Office received the response of the city on July 31, 2017. The City provided in the response that it largely does not disagree with the assertions set forth by the Complainant. The City emphasized that the underlying issue of the Complaint is that the City has not provided data in a format desired by the Complainant, not because the “City has failed to allow the Complainant access to the data or to make copies of the reports in which that data is contained.” The City also indicated that requesting an SQL file is not as easy as calling the database provider and authorizing the provider to download the raw data. The City indicated that this would require a special work order, and that it was “uncertain if any expense is involved.”

## ANALYSIS

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 City of Charlestown is a public agency for the purposes of the APRA. Ind. Code § 5-14-3-2(n). Therefore, 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. Ind. Code § 5-14-3-3(a).

Indiana Code section 5-14-3-3(d) provides that “a public agency that maintains or contracts for the maintenance of public records in an electronic data storage system shall make reasonable efforts to provide to a person making a request a copy of all disclosable data contained in the records on paper . . . or any other method of electronic retrieval if the medium requested is compatible with the agency’s data storage system.” The statute does not define “reasonable efforts,” but considering that the City set up an appointment for inspection of the electronic records, attempted to download the data and learned that it was not possible, and requested the database provider generate a report of the data, the City has arguably made a reasonable effort to download the data in a format that can be provided to the Complainant.

At this point, this is less of a public access issue and more of a logistical issue. There appears to be two options available to the parties:

- (1) The City could authorize the database provider to download the raw data as an SQL file. There is some disagreement on the cost of this based on the information provided to my office. The Complainant characterizes this as the database provider simply needing a phone call from the City requesting a download of the database in SQL format. The City characterizes this as a special work order that may take four weeks or more and may involve some expense.

If there is no cost to requesting the database download, then this would probably be the best method to provide the requested records to the Complainant as it would involve the least amount of time on the City's behalf to fulfill the request, and the data format the Complainant wants would be provided. However, if the City must pay the provider to download the data, the City would be authorized to charge the Complainant for the actual cost of downloading the data. The City would need to notify the Complainant of the cost prior to proceeding with this option, but I am sure at this point the cost of downloading the data would not exceed what has already been spent in attorney's fees debating this matter.

The City mentioned in the response that there "is a legitimate concern that the integrity and accuracy

of the City's data may become corrupted if it is converted to or delivered in a format to be read in a computer other than the one it was designed for." While my Office is not an expert in IT matters, the database provider should be maintaining a backup copy of the database, and downloading a copy of the database and converting it to SQL should not have any effect on the database. This should be confirmed with the database provider before proceeding with this option. Secondly, if the concern is that the Complainant might be able to alter the records provided or the data would appear corrupted if the Complainant opens the SQL file in Microsoft Access, for example, rather than the Comcate program, this should not prevent the copying of data. Even if the SQL file does not work with the software the Complainant is using, this is only a problem for the Complainant. It should have no effect on the accuracy of the original database maintained by the provider, as the Complainant would only have a copy of the database.

- (2) The Complainant could visit City Hall again and have a City employee assist with inspecting the records as was done before. If the Complainant wishes to print the information on the screen (if this is even possible with the database the City uses), the City is authorized to charge up to ten cents per page, not to exceed the actual cost of printing the page.

Ultimately, the parties need to work together to decide how to proceed. Declining to download the file in a format not

used by the database software is not a denial of access considering that the City appears to be more than willing to accommodate the Complainant in inspecting the records in person.

### **CONCLUSION**

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

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

Luke H. Britt  
Public Access Counselor