
OPINION OF THE PUBLIC ACCESS COUNSELOR

CATHLEEN STUDER,
Complainant,

v.

JENNINGS COUNTY AREA PLAN COMMISSION,
Respondent.

Formal Complaint No.
17-FC-267

Luke H. Britt
Public Access Counselor

BRITT, opinion of the Counselor:

This advisory opinion is in response to a formal complaint alleging the Jennings County Area Plan Commission (“Commission”) violated the Access to Public Records Act¹ (“APRA”). The Commission responded to the complaint through attorney Bradley Kage. 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 November 17, 2017.

¹ Ind. Code §§ 5-14-3-1 to -10

BACKGROUND

Cathleen Studer (“Complainant”) filed a formal complaint alleging the Jennings County Area Plan Commission violated the Access to Public Records Act by failing to provide information within a reasonable time.

Complainant has a real estate service and advertised her business on a property along the highway. The County objected to the sign as a violation of a zoning ordinance and required it to be taken down.

On October 2, 2017, Complainant hand-delivered a letter to the Commission Office seeking information on a list of other signs/billboards placed along local highways. By her interpretation of guidance from the Indiana Department of Transportation, those billboards were in violation of Federal regulations. She sought the dates permits were granted and the reasoning for the variance. Complainant also sought “a list of everyone contacted with the date and time you spoke with them” regarding the signs. Additionally, she asked for the name of the complainant who filed a grievance as to a sign upon which she was depicted.

The Commission responded contending it did not consider the letter a public records request, but rather a request for information related to a zoning violation. It provided the list of other signs along with the reason for the variance but contends names of complainants are not given out per local policy. The Commission does not address the issue of the call log.

ANALYSIS

This formal complaint presents an issue of whether the Jennings County Area Plan Commission response time—nearly 30 calendar days—constitutes a *reasonable time* as required by the Access to Public Records Act.

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 Jennings County Area Plan Commission is a public agency for the purposes of the APRA, and subject to its requirements. Ind. Code § 5-14-3-2(n). Therefore, any person has the right to inspect and copy the Commission’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).

Reasonable Time

Under APRA, a public agency may not deny or interfere with the exercise of the right for any person to inspect and copy a public agency’s disclosable public records. Ind. Code § 5-14-3-3(a). Toward that end, within a *reasonable time* after the request is received by the agency, the public agency shall either:

- (1) provide the requested copies to the person making the request; or
- (2) allow the person to make copies:

(A) on the agency's equipment; or

(B) on the person's own equipment.

In this case, the parties disagree about what constitutes a *reasonable time* as it pertains to the Complainant's request. Notably, the APRA does not specifically define what constitutes a *reasonable time* as it pertains to the production of, or inspection of, responsive records. Often, this Office is asked to make a determination as to the reasonableness of the time for production by a public agency. What is a reasonable time period under one circumstance may not be reasonable in another. What is more, the production of responsive records need not materially interfere with the regular discharge of the functions and duties of the public agency. *See* Ind. Code § 5-14-3-7(a).

Historically, this Office has interpreted the Access to Public Records Act to require acknowledgement of a complaint within seven days of a mail request or within twenty-four hours of an in-person request. *See* Ind. Code § 5-14-3-9.

The determination of what is a reasonable time for production, therefore, depends upon the public records requested and circumstances surrounding the request. Although reasonable time is not defined in the APRA or by the Courts, it is a standard which differs on a case-by-case basis.

The factors affecting the reasonableness of timely production of documents include but are not limited to:

- The size of the public agency;
- The size of the request;
- The number of pending requests;
- The complexity of the request; and

- Any other operational considerations that may reasonably affect the public records process.

The tolling of a “reasonable” time does not begin until an agency receives the request. In the instant case, the request was received on October 2, however, it was not conspicuously marked as a public records request. Although reference is made to the APRA, it reads like an interrogatory as opposed to a request for a specific document. Requests for information are not addressed by the Access to Public Records Act. A request must seek a specific named or identified document which exists currently in a tangible form. The October 2 letter seeks to have the agency aggregate information from other (possibly) existing documents and put them in an answer.

Nevertheless, the agency did this within thirty days on October 31 by listing the dispositions of the signs. As for the name of the complainant who lodged the grievance against her sign, the Plan Commission cited a policy of non-disclosure. Therefore, while the timing of the request is appropriate, there is no statute allowing an agency to withhold the name of a complaint of this sort. If a document exists with the name of the complainant regarding this specific sign issue, it should be released.

Only after the October 31 letter did the Complainant ask for a log of the calls dealing with a particular situation. The Complainant did indeed consult with this Office for a determination. The logs, if they exist, should be made available for inspection. It should be noted, however, that the law does not mandate a creation of such a log and therefore should

not be interpreted to mean a record should be created pursuant to a request. A valid public records request is for a document that actually exists at the time of the request.

CONCLUSION

Based on the foregoing, it is the opinion of the Public Access Counselor that the Jennings County Area Plan Commission release any document that exists showing the name of the individual filing a sign grievance against the Complainant. Likewise, any call logs germane to the situation should be released *if they exist*.

A handwritten signature in black ink, appearing to read 'LH Britt', with a stylized flourish at the end.

Luke H. Britt
Public Access Counselor