

---

**OPINION OF THE PUBLIC ACCESS COUNSELOR**

---

KIRBY A. LANE,  
*Complainant,*

v.

MIAMI COUNTY BOARD OF COMMISSIONERS,  
*Respondent.*

---

Formal Complaint No.  
18-FC-14

---

Luke H. Britt  
Public Access Counselor

---

BRITT, opinion of the Counselor:

This advisory opinion is in response to a formal complaint alleging the Miami County Board of Commissioners (“Commissioners”) violated the Access to Public Records Act<sup>1</sup> (“APRA”). The Commissioners have responded to the complaint via Counsel Patrick J. Roberts. In accordance with Indiana Code § 5-14-5-10, I issue the following opinion to the

---

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

formal complaint received by the Office of the Public Access Counselor on January 29, 2017.

### **BACKGROUND**

Kirby A. Lane (“Complainant”) filed a formal complaint alleging the Miami County Board of Commissioners violated the Access to Public Records Act by failing to provide him with requested documents.

On December 1, 2017, Lane filed a public records request with the Commissioners seeking fifteen (15) sets of documents – some with subcategories indicated. This was subsequent to a request from the county attorney to pare down the scope of a November 13, 2017 request seeking related items. The subject matter of the requested items involves Wind Energy Conversion Systems, a matter this Office has been very well familiar with as they are frequently the target of pre-litigation discovery requests guised as public records requests. Lane’s narrative in his formal complaint barely gives rise to a cause of action, but this Office accepted the complaint as an opportunity to address these kinds of voluminous asks.

By January 29, 2018, the county attorney reported to this office that, despite the breadth of the request, the materials had been provided to Lane.

### **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 Miami County Board of Commissioners is a public agency for the purposes of the APRA; and thus, is subject to the Act's requirements. Ind. Code § 5-14-3-2(n). As a result, 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* Ind. Code § 5-14-3-3(a).

The APRA is an accountability tool to ensure that the constituency is informed as to the happenings of the government, that it is being good stewards of the public trust and making sound policy and fiscal decisions. What it is not is a mechanism to settle scores, troll a government unit, or bombard an agency to gum up operations. APRA is also not a pre-litigation evidence gathering device.

In the preceding few months, this Office has received a disproportionate amount of correspondence from opponents of mid-central and northern Indiana wind energy initiatives. While civic engagement and even opposition to government initiatives are healthy and worthy exercises, public records requests are often weaponized. Just like a government unit can abuse its discretion in withholding critical records, so too can citizens abuse the process by saturating a public agency with requests. This is sometimes counterintuitive as the backlash often takes the form of bad legislation, retaliation, and an overly-defensive public agency. Using public records as a sort of poor man's discovery serves nothing but to frustrate the process.

Remonstrators of a public works project can express frustration and opposition in a myriad of ways but this Office

will not stand for the proposition that access to public records requests are a substitute for vengeance. It takes time away from other constituents' requests and deters an agency from being forthcoming and responsive.

From the information provided, it very much appears the public records request submitted by the Complainant was pre-litigation discovery trawling for potential evidence to be used in a subsequent lawsuit. It reads in part like an interrogatory and a request for production of documents as a trial pleading. If the Complainant intends to sue the County for an injunction to stop the development of the wind energy program, then he should just do it and not use public records requests as a cheap substitute for a *subpoena duces tecum*.

## **CONCLUSION**

Based on the foregoing, it is the opinion of the Public Access Counselor that the Miami County Board of Commissioners has not violated the Access to Public Records Act.

A handwritten signature in black ink, appearing to read 'LHB', is positioned above the name of the Public Access Counselor.

**Luke H. Britt**  
Public Access Counselor