
OPINION OF THE PUBLIC ACCESS COUNSELOR

RONALD D. EVANS,
Complainant,

v.

BATTLE GROUND CONSERVANCY DIST.,
Respondent.

Formal Complaint No.
19-FC-12

Luke H. Britt
Public Access Counselor

BRITT, opinion of the Counselor:

This advisory opinion is in response to a formal complaint alleging the Battle Ground Conservancy District violated the Access to Public Records Act.¹ Conservancy Board Chair Carol Watson filed an answer to the complaint on behalf of the district. In accordance with Indiana Code § 5-14-5-10, I issue the following opinion to the formal complaint received

¹ Ind. Code §§ 5-14-3-1 to -10

by the Office of the Public Access Counselor on January 30, 2019.

BACKGROUND

This case is about the disclosure of certain records associated with a water tower project in the Battle Ground Conservancy District.

On January 2, 2019, Ronald D. Evans (“Complainant”) emailed a public records request to the treasurer of the Battle Ground Conservancy District (“Conservancy”) seeking the following:

1. The Umbaugh Rate Study released at the December meeting of the Battle Ground Conservancy;
2. The geotechnical Survey performed for the North Railroad Street well field;
3. The document [that] shows the ISO (Insurance Services Office) “Fire Flow Rate” used for sizing the new water tower;
4. The Engineering Study [that] determines the size of the new water tower;
5. The average daily water consumption used for sizing the new water tower.

Evans exchanged follow-up emails with the Conservancy throughout the month of January about his request. He filed a formal complaint with this office on January 30, 2019.

On February 20, 2019, the Conservancy filed an answer to the complaint with this office. The conservancy maintains that it has not violated APRA as alleged by Evans.

ANALYSIS

1. The Access to Public Records Act

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 Battle Ground Conservancy District 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 Conservancy’s 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).

2. Evans’ Requests

2.1 Umbaugh Rate Study

Evans requested the “Umbaugh Rate Study,” which he claims the Conservancy Board received at its December 19, 2018 meeting.

The Conservancy acknowledges that Umbaugh provided the Conservancy Board members with a preliminary draft of the rate study at the December 2018 meeting. It then sent Umbaugh changes to the existing information, which will impact the study, for inclusion in an updated report. Although the Conservancy contends that it originally intended

to wait for the updated report before distributing it, it agreed to provide Evans with the preliminary report as requested.

2.2 Geotechnical Survey

The Conservancy asserts that it executed a contract to lease a water tower from a developer, and the developer ordered a geotechnical survey to move forward with final specifications for design and bidding purposes. The Conservancy says information from a preliminary report was shared by the engineering company in November, but it was marked confidential.

Although the Conservancy concedes that this information was not originally included in the public information binder required for the lease, it contacted the developer in January requesting the report be shared. The Conservancy contends that Evans received the survey from the developer by email on February 6, 2019.

2.3 ISO Fire Flow Rate Document

The Conservancy maintains that the ISO document requested by Evans is available to insurance professionals and others, but is not part of the documentation provided to the Conservancy by the engineers or the developer. This Conservancy communicated to Mr. Evans on January 15, 2019 via email. It appears the Conservancy made a good faith effort to get the information, but it was unable to do so. As a result, the Conservancy does not have a record responsive to this particular request.

Notably, APRA does not require a public agency to provide records that do not exist or create a new record to fulfill a request.

2.4 Engineering Study

The Conservancy maintains that it provided a public copy of a document titled “Water Tower Replacement Evaluation October 2016,” which it says contains information current at that time. Since then, the Conservancy says subsequent meetings of the design team resulted in changes to some of the assumptions and parameters in the initial evaluation; and thus, there is no single study document that determines the size of the new water tower as requested by Evans.

What is more, the Conservancy maintains that the changes have been discussed at public meetings and working documents disclosed to Evans and others. Additionally, the Directors of the Conservancy posts questions and answers on its website. It argues the Conservancy has responded to all pending questions.

2.5 Average Daily Water Consumption

Evans requested a document he described as the “average daily water consumption used for sizing the new water tower.” The Conservancy characterizes the request as a “question, not a document.”

This office distinguishes between requests for public records and requests for information.

Under APRA, “public record” means:

any writing, paper, report, study, map, photograph, book, card, tape recording, or other material that is created, received, retained, maintained, or filed by or with a public agency and which is generated on paper, paper substitutes, photographic media, chemically based media, magnetic or machine readable media, electronically stored data, or any other material, regardless of form or characteristics.

Ind. Code § 5-14-3-2(r). In general, a request for a public record should be seeking a tangible document or some other type of record that falls within APRA's broad definition of public record.

On the other hand, a request for information does not seek a tangible document or public record as defined under the Act. Instead, a request for information poses a question that requires the public agency to extrapolate information from an existing document or some other source.

The Conservancy contends that at the time of Evans' request that no document existed with the information he requested.

CONCLUSION

Based on the foregoing, it is the opinion of the Public Access Counselor that the Battle Ground Conservancy District has not violated the Access to Public Records Act.

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

Luke H. Britt
Public Access Counselor