
OPINION OF THE PUBLIC ACCESS COUNSELOR

TRUDY ELLIS,
Complainant,

v.

MADISON TOWNSHIP BOARD,¹
Respondent.

Formal Complaint No.
19-FC-15

Luke H. Britt
Public Access Counselor

BRITT, opinion of the Counselor:

This advisory opinion is in response to a formal complaint alleging Madison Township violated the Access to Public Records Act.² Attorney Stephen R. Buschmann filed an answer to the complaint on behalf of the Township. In accordance with Indiana Code § 5-14-5-10, I issue the following

¹ Morgan County, Indiana.

² Ind. Code §§ 5-14-3-1, to -10

opinion to the formal complaint received by the Office of the Public Access Counselor on February 8, 2019.

BACKGROUND

This case is about the amount of time taken to create and produce minutes of a Township Board.

The Madison Township Board (“Board”) convened an organizational meeting on January 8, 2019. The Board selected Ann Turley, a newly elected member of the Board, to serve as the Board’s secretary for the year.

On January 15, 2019, Trudy Ellis (“Complainant”) emailed a records request to the Township clerk asking for the draft minutes from the Board’s meeting a week earlier. The Township forwarded the request to Turley and she responded the same day by stating the draft minutes had not been completed, but would be finished by the Board’s next meeting on February 12, 2019.

On January 22, 2019, Ellis followed up with Turley by email. Ellis asked if Turley would be posting the draft minutes on the Township’s website. Ellis noted there would be five weeks between Board meetings, and inquired about when the draft minutes would be available.

The next day Turley emailed Ellis and stated she was checking with other boards about their policies so Madison Township is more consistent.

Five days later, Ellis followed up with Turley to find if the draft minutes had been completed and if the minutes would be posted on the Township’s website. Turley responded that the minutes were not yet available. On February 6, Ellis

again asked Turley if the draft minutes had been completed and if the minutes would be posted on the Township's website. The same day, Turley responded that she planned to have the minutes completed for the Board's meeting on February 12.

Two days later, Ellis filed a formal complaint with this office alleging the Board improperly denied her access to public records in violation of the Access to Public Records Act.

Notably, on February 12, 2019, the Board distributed the draft minutes of the January 8, 2019 meeting to all attendees, including Ellis, prior to the Board's meeting that night.

On February 14, 2019, the Board filed a response to Ellis's complaint with this office. In sum, the Board argues that it did not deny Ellis's request on January 22 as alleged, and it has fully complied with the spirit of the law.

The Board contends that Turley, as board secretary, prepared the minutes of the January 8, 2019 meeting in accordance with Indiana Code section 36-6-6-8, which does not provide a specific timeline for creating minutes, except that the minutes must be provided to each member of the Board before the next meeting.

ANALYSIS

At issue in this case is whether the Madison Township Board violated the Access to Public Records Act by releasing draft minutes of its January 8, 2019 meeting 28 days after receiving the request.

1. 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.

Madison Township is a public agency for the purposes of the APRA; and thus, 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 Township’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 § 5-14-3-4(a), and (b).

As a preliminary matter, it is important to mention that APRA does not mandate or otherwise govern the creation of, or the content of the meeting minutes of the governing bodies of public agencies. APRA governs access to and disclosure of those records. Although the Open Door Law (“ODL”) does generally give parameters for the inspection

of meeting memoranda,³ the ODL was not cited in the complaint, and there is a significant question as to whether another statute applies specifically to Township Boards.

When a public agency receives a public records request, APRA requires the agency to provide the requested copies or allow the requestor to make copies within a *reasonable time*. Ind. Code § 5-14-3-3(b). The term “reasonable time” is not defined under the Act⁴.

Determining what is a reasonable time for production of records depends, in part, on the specific public records requested and circumstances surrounding the request. Although reasonable time is not defined in the APRA or by the courts, the standard is applied case by case.

This office considers various factors in evaluating whether an agency has met APRA’s reasonable time standard. These factors include, but are not limited to: (1) the size of the public agency; (2) the size of the request; (3) the number of pending requests; (4) the complexity of the request; and (5) any other operational considerations or factor that may reasonably affect the public records process.

Here, Ellis requested the draft minutes from the Madison Township Board meeting on January 8, 2019. She made the request on January 15, 2019, and ultimately received the draft minutes on February 12, 2019. In other words, Ellis received the draft minutes 28 days after she made the request.

³ Ind. Code § 5-14-1.5-4.

⁴ A “reasonable period of time” is also mention in the Open Door Law. Ind. Code § 5-14-1.5-4(c) for memoranda.

Indeed, draft minutes fall squarely within APRA's definition of public record. *See* Ind. Code § 5-14-3-2(r). So, the issue is whether 28 days constitutes a reasonable time.

Although townships are small public agencies, a request for meeting minutes is one of the least complex types of public records requests an agency of any size will receive. In her request, Ellis asked for the draft minutes of one Board meeting, so the size of the request is minimal. Even though this office is not privy to the number of requests pending in the Madison Township, it is unlikely that factor would tip the scale one way or the other in this case.

In the view of this office, the dispositive factor is the catch-all consideration of any other factor that may reasonably affect the public records process.

Here, the creation of the permanent record of Township Board proceedings is governed by statute. Specifically, Indiana Code section 36-6-6-8 provides:

The legislative body shall keep a permanent record of its proceedings in a book furnished by the executive.

The secretary of the legislative body shall, under the direction of the legislative body, record the minutes of the proceedings of each meeting in full and shall provide copies of the minutes to each member of the legislative body before the next meeting is convened.

After the minutes are approved by the legislative body, the secretary of the legislative body shall place the minutes in the permanent record

book. The chair of the legislative body shall retain the record in the chair's custody

Simply put, as secretary of the Board, Turley is required to record the minutes in full and provide copies to her fellow board members before the next meeting is convened.

Reading Indiana Code section 36-6-6-8 in harmony with APRA's reasonable time standard, this office cannot conclude the Board violated APRA by providing the draft minutes on February 12, 2019. Plainly enough, Turley had until that day to create and provide the minutes from the previous meeting to the other Board members.

That stated, this opinion should not be construed to green light the Board taking nearly a month to produce meeting minutes that already exist or have been approved by the Board, or both. Generally, that would not be reasonable under APRA. Similarly, the creation of meeting minutes usually does not take this long. This matter, however, concerns a newly elected board member in a brand new position.

Based on the information provided to this office, Turley had not created draft minutes at the time of Ellis's request. What is more, by statute, Turley had a reasonable period of time to complete them and provide them to the Board.

For a newly elected board member and secretary, 28 days is reasonable under the circumstances.

CONCLUSION

Based on the foregoing, it is the opinion of the Public Access Counselor that Madison Township Board 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