
OPINION OF THE PUBLIC ACCESS COUNSELOR

CHASE D. YANZER.,
Complainant,

v.

SHELBY COUNTY DRAINAGE BOARD,
Respondent.

Formal Complaint No.
19-FC-84

Luke H. Britt
Public Access Counselor

BRITT, opinion of the Counselor:

This advisory opinion is in response to a formal complaint alleging the Shelby County Drainage Board violated the Access to Public Records Act.¹ The board did not respond to the complaint despite an invitation to do so. 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 September 16, 2019.

¹ Ind. Code § 5-14-3-1 to 10.

BACKGROUND

This case involves a dispute over a governing body's lack of responses to multiple public records requests.

On August 28, 2019, Chase D. Yanzer ("Complainant") sent a public records request by certified mail to the Shelby County Drainage Board ("Board"). Yanzer requested the last five "Classification of Drains Reports" adopted by the Board. The county surveyor creates and submits the classification reports the Board for adoption. Yanzer says the Board did not respond to the request.

As a result, Yanzer filed a formal complaint with this office on September 16, 2019.

This office solicited a response from the Board on September 16, 2019. The Board did not respond to Yanzer's complaint.

ANALYSIS

1. The Access to Public Records Act ("APRA")

It is the public policy of the State of Indiana that all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees. Ind. Code § 5-14-3-1. 5

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." *Id.* The Shelby County Drainage Board is a public agency for the purposes of APRA; and thus, subject to the act's requirements. Ind. Code

§ 5-14-3-2(n). Unless otherwise provided by statute, any person may inspect and copy the Board's public records during regular business hours. Ind. Code § 5-14-3-3(a).

Here, Yanzer requested drain classification reports from the Board. By statute, the county surveyor creates and submits these written reports to the Board for adoption. *See* Ind. Code § 36-9-27-34, -35. Whether the Board received them is not at issue in this case, only that the Board did not respond to a properly submitted public records request.

Under APRA, a request for records is considered denied after seven days elapse from the date the public agency receives the request. *See* Ind. Code § 5-14-3-9(b)(2). In this instance, there is evidence the Board received the request because Yanzer sent it by certified mail. Yanzer provided a copy of the certified receipt.

When a request is overlooked for a certain unreasonable period of time, it is considered denied. This does not, however, give an agency license to simply disregard a request. A denial of a written records request must be accompanied by a written denial and statutory justification for said denial. *See* Ind. Code § 5-14-3-9(d)(2). The Board's lack of this response constitutes a violation of the Access to Public Records Act.

Furthermore, in accordance with Indiana Code section 5-14-5-5, a public agency shall cooperate with the public access counselor in any investigation or proceeding when a complaint is filed. In the absence of such cooperation, this office has no choice but to find the Board in noncompliance.

CONCLUSION

Based on the foregoing, it is the opinion of the Public Access Counselor that the Shelby County Drainage Board violated the Access to Public Records Act.

A handwritten signature in black ink, appearing to read 'LH Britt', with a long, sweeping underline.

Luke H. Britt
Public Access Counselor