
OPINION OF THE PUBLIC ACCESS COUNSELOR

SEAN SMITH
Complainant,

v.

MADISON CO. PLANNING COMMISSION,
Respondent.

Formal Complaint No.
21-FC-140

Luke H. Britt
Public Access Counselor

BRITT, opinion of the counselor:

This advisory opinion is in response to a formal complaint alleging the Madison County Planning Commission violated the Access to Public Records Act.¹ Executive Director Brad Newman filed an answer on behalf of the agency. 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 10, 2021.

¹ Ind. Code § 5-14-3-1-10.

BACKGROUND

This case involves a dispute over whether the Madison County Planning Commission (Commission) responded to a public records request in a timely manner as required under the Access to Public Records Act.

On June 8, 2021, Sean Smith (Complainant), filed a public records request with the Commission seeking the following:

Certificate of mailing or other substantially similar documents including but not limited to return receipts from certified mailings or other proof of delivery for the following petitions; 2019-SU-001, 2019-V-005, 2019-V-006, or any petition submitted to any listed agency by Lone Oak Solar Energy LLC with regards to providing notice.

On September 9, 2021, Smith sent a follow-up email to the Commission regarding the status of his request. The next day, after not receiving a reply, Smith filed a complaint with this office alleging a violation of the Access to Public Records Act (APRA). Specifically, Smith argues the Commission failed to respond to his request. He notes that 93 days passed since he first submitted the request to the Commission.

On October 12, 2021, the Commission filed an answer to Smith's complaint denying noncompliance with APRA. The Commission argues that Smith's request has not been denied. Instead, the Commission argues that Smith's request was delayed due to an abnormally large workload over the last two years much – of which was submitted by Smith – combined with a shortage of office staff, the Commission has

required longer than usual to address Smith’s request. While not ideal, the Commission notes that it is doing its best to adjust to the current circumstances and intends to provide Smith with a response to his request by the end of the year.

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 Madison County Planning Commission (Commission) is a public agency for purposes of APRA; and therefore, subject to its requirements. *See* Ind. Code § 5-14-3-2(q). As a result, unless an exception applies, any person has the right to inspect and copy the Commission’s public records during regular business hours. Ind. Code § 5-14-3-3(a).

Indeed, APRA contains mandatory exemptions and discretionary exceptions to the general rule of disclosure. *See* Ind. Code § 5-14-3-4(a) to -(b).

2. Reasonable timeliness

APRA requires a public agency to provide public records to a requester within a reasonable time after receiving a request. Ind. Code § 5-14-3-3(b). Notably, APRA does not define the term “reasonable time.”

Here, the parties disagree about whether the Commission complied with APRA’s reasonable time standard.

Determining what is a reasonable time for the production of records depends on the public records requested and circumstances surrounding the request. Undoubtedly, certain types of records are easier than others to produce, review, and disclose. As a result, this office evaluates these issues case by case.

As set forth above, Smith has waited 93 days for the production of records. The request in this matter does not appear to be unusually complex or difficult on its face.

Notably, however, this is Smith's third complaint against the Commission in 2021. The first, addressed in *Opinion of the Public Access Counselor 21-FC-27*, was sent to the Commission in solicitation of a response, but one was not received. As such, this office had no choice but to find the Commission in violation.²

Nevertheless, that complaint involved an unusually complex and voluminous request. As a result, this office observed the following:

Indeed, the request in question is a bit unwieldy as written. That doesn't mean the request is deficient, but rather that the Department would have been within its rights to ask Smith to pare it down a bit.

In any event, that did not occur, and the Department did not give an indication the request was unmanageable. Therefore, the Department is on the hook to finish the job and provide the requested documents.

² The second complaint involved an Open Door Law issue and is not immediately relevant to this opinion.

What is more, there may be a myriad of reasons for a 60-day delay based on certain circumstances. This office has explored those reasons ad nauseam in other advisory opinions, any of which would provide an affirmative defense.

Here, the Commission elucidated those reasons. It appears that Smith and the Commission have been in a protracted interaction regarding a pending lawsuit where Smith is the plaintiff. It is not clear why Smith chose to file public access requests as opposed to a much more efficient third-party request for production through the discovery mechanisms with the trial court. In any case, while this request is not germane to that litigation, the requests to the Commission appear to be significant. Based on the information provided, as well as those in other complaints, the Commission's delay could be justified in this circumstance.

CONCLUSION

Based on the foregoing, it is a conceivable affirmative defense that the Commission's delay was justified in this instance. Without more, it does not warrant a finding of non-compliance.

A handwritten signature in black ink, appearing to read 'LHB', with a stylized flourish underneath.

Luke H. Britt
Public Access Counselor