
OPINION OF THE PUBLIC ACCESS COUNSELOR

TINA PORTER
Complainant,

v.

WHEATFIELD TOWN COUNCIL,
Respondent.

Formal Complaint No.
21-FC-146

Luke H. Britt
Public Access Counselor

BRITT, opinion of the counselor:

This advisory opinion is in response to a formal complaint alleging the Wheatfield Town Council violated the Access to Public Records Act.¹ Attorney Luis Vallejo filed an answer on behalf of the Council. 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 14, 2021.

¹ Ind. Code § 5-14-3-1-10.

BACKGROUND

This case involves a dispute over whether the Wheatfield Town Council violated the Access to Public Records Act (APRA) by failing to retain and disclose a recording of monthly public meeting.

On August 19, 2021, the Wheatfield Town Council (Council) held its monthly public meeting. The town made a recording of the meeting for the stated purpose of ensuring accuracy of the meeting minutes.

The next day, Tina Porter (Complainant) filed a public records request with the Council seeking a copy of the audio recording of the meeting.

On August 21, 2021, the Council's attorney Luis Vallejo emailed Porter confirming receipt of her request.

On September 14, 2021, after various follow-up emails to inquire about the status of the request, Porter received a letter from Vallejo responding to her request. Vallejo informed Porter that the recording could not be provided because the Council no longer had the recording. Specifically, Porter received the following message:

the [meeting] recording is used to ensure the accuracy of the minutes kept by the Town regarding the meetings held but it is not kept or stored in any capacity. The recording is immediately listened to, and the accuracy of the minutes compared. Once that is done, the recording is discarded as all the information is created in the minutes for the meeting.

While the Council stated that the request could not be fulfilled because the recording no longer existed, it acknowledged that if the recording existed, it would be disclosable as a public record. Furthermore, Vallejo stated that minutes for that August 19 meeting would be available to the public at the following Council meeting, which was held on September 16, 2021.

As a result, Porter filed a formal complaint with this office. Porter disputes the Council's version of events, arguing that since her request was sent prior to 8:00 a.m. the morning after the meeting, there was no way the recording was destroyed by then.

On October 7, 2021, the Council filed an answer to Porter's complaint. The Council reiterated the points in its September response to Porter's request insofar as the recordings made during public meetings are only used to ensure the accuracy of the meeting's minutes and are then promptly discarded. Then, after contacting this office upon receiving notice of the formal complaint, the Council's attorney was made aware of the retention schedule that dictates how recordings of town council meetings must be stored and maintained.

The Council asserts that prior to speaking with this office, it had no knowledge of any retention requirements. Therefore, the Council contends that any violation of the law was unintentional, and to avoid any further issues the Council will no longer be recording their monthly meetings, and instead will be relying on paper notes to allow for the creation of the meeting minutes.

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 Town of Wheatfield 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 department’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. Meeting recordings

Under APRA, public agencies have a duty to protect public records from “loss, alteration, mutilation, or destruction.” Ind. Code § 5-14-3-7. Additionally, a public official or agency may not destroy or otherwise dispose of any government record, except in accordance with a record retention schedule or with the written consent of the Indiana Archives and Records Administration. *See* Ind. Code § 5-15-5.1-14.

Toward that end, APRA provides that public records may be destroyed in accordance with statutory retention schedules, or for records not subject to a retention schedule, in the ordinary course of business. *See* Ind. Code § 5-14-3-4(h)(1) to -(2).

The retention schedule for county and local government dictate that recordings must be retained until minutes are ratified at a subsequent meeting.²

Here, the best practice would have been to treat the request – made immediately after the meeting – as a placeholder before destruction. Undoubtedly, the recording is a public record by statute. *See* Ind. Code § 5-14-3-2(r). As a result, the Council should have provided the recording to Porter while it existed. An eventual opportunity to delete an outdated record does not obviate the need to provide it before destruction.

While it may be cold comfort to the complainant in this case, this office appreciates Wheatfield’s recognition of the state of law going forward. Nevertheless, the recording should have been provided in accordance with APRA.

² https://www.in.gov/iara/files/county_general.pdf; Section Gen. 10-02

CONCLUSION

Based on the foregoing, it is the opinion of this office that the Wheatfield Town Council 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