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**OPINION OF THE PUBLIC ACCESS COUNSELOR**

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SEAN SMITH  
*Complainant,*

v.

MADISON COUNTY PLANNING DEPT.  
*Respondent.*

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Formal Complaint No.  
21-FC-27

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Luke H. Britt  
Public Access Counselor

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BRITT, opinion of the counselor:

This advisory opinion is in response to a formal complaint alleging the Madison County Planning Department violated the Access to Public Records Act.<sup>1</sup> Madison County 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 March 8, 2021.

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<sup>1</sup> Ind. Code § 5-14-3-1-10.

## **BACKGROUND**

This case involves an allegation that the Madison County Planning Department has taken an unreasonable amount of time to fulfill a public records request in violation of the Access to Public Records Act (APRA).

On December 16, 2020, Sean Smith (Complainant) faxed a public records request to Brad Newman, the Executive Director for the Madison County Planning Department, seeking the following:

1. Petition(s), applications(s), including any supportive material(s) of Drew Parts or any other party to gain rezoning, variance, or special use as required under the Madison County Zoning Regulations for 705 E School Street and 815 E School Street (Parcels 48-07-31-300-026.000-029 & 48-07-31-300-021.000-029)
2. Public Notice(s) of special use, variance or rezoning meeting(s) regarding parcel(s) 48-07-31-300-026.000-029 and/or 48-07-31-300-021.000-029
3. Documents showing the date of meeting(s) and agenda(s) regarding parcel(s) 48-07-31-300-026.000-029 and/or 48-07-31-300-021.000-029
4. All meeting minutes regarding parcel(s) 48-07-31-300-026.000-029 and/or 48-07-31-300-021.000-029
5. Findings of fact required under article 11.9 for any special use, variance, or rezoning regarding parcel(s) 48-07-31-300-026.000-029 and/or 48-07-31-300-021.000-029
6. Any committee(s), subcommittee(s), or department studies, findings, or technical surveys regarding parcel(s) 48-07-31-300-026.000-029 and/or 48-07-31-300-021.000-029
7. Any documents, notes or memorandum received from the Madison County Technical Review Committee regarding parcel(s) 48-07-31-300-026.000-029 and/or

48-07-31-300-021.000-029 in the possession of the Madison County Planning Commission

8. Previous complaints received regarding parcel(s) 48-07-31-300-026.000-029 and/or 48-07-31-300-021.000-029
9. Disposition records of any pervious complaints regarding parcel(s) 48-07-31-300-026.000-029 and/or 48-07-31-300-021.000-029
10. Investigatory documents regarding any previous complaints regarding parcel(s) 48-07-31-300-026.000-029 and/or 48-07-31-300-021.000-029
11. Responses to zoning, ordinance, or any other complaints received from any respondent regarding parcel(s) 48-07-31-300-026.000-029 and/or 48-07-31-300-021.000-029
12. Any document(s) and/ or permit(s) that authorize the use of Light Industrial zoned parcels to engage in salvage and/or junking activities

On December 17, 2020, Newman acknowledged receipt of the request. On December 25, 2020, Newman informed Smith that his request was under review, and he would hopefully have a full response within a week. Smith contends that he sent an updated request to Newman on January 4, 2021, and at the time of filing he had not received any records from Madison County.

As a result, Smith filed a formal complaint on February 18, 2021.

This office forwarded the complaint to Newman and solicited a response to the complaint. Newman acknowledged receipt of the notice, but after multiple attempts to solicit a response, Newman failed to provide an answer.

## 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 Department (Department) is a public agency for purposes of APRA; and therefore, subject to the law’s 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).

A critical element of a meaningful right to inspect public records is the right to do so within a reasonable time. Ind. Code § 5-14-3-3. This complaint hinges on that standard.

### 2. Reasonable time

APRA gives public agencies a reasonable time to respond to a records request after the initial acknowledgement. *See* Ind. Code § 5-14-3-3(a). The Department provided the initial response within an acceptable time, however, Smith filed his formal complaint two months after he submitted the request.

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.

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.

Nonetheless, the Department failed to respond to this office's initial notice and several follow-up calls despite the statutory requirement to cooperate with this office. *See* Ind. Code § 5-14-5-5. Since the Madison County Planning Department did not respond, this office will not make excuses or arguments on its behalf.

## CONCLUSION

Based on the foregoing, it is the opinion of this office that the Madison County Planning Department violated the Access to Public Records Act.



Luke H. Britt  
Public Access Counselor