
OPINION OF THE PUBLIC ACCESS COUNSELOR

GAYLE A. CONNER
Complainant,

v.

CITY OF DELPHI,
Respondent.

Formal Complaint No.
21-FC-54

Luke H. Britt
Public Access Counselor

BRITT, opinion of the counselor:

This advisory opinion is in response to a formal complaint alleging the City of Delphi violated the Access to Public Records Act.¹ Delphi Clerk-Treasurer Leanne Aldrich filed an answer on behalf of the City. 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 May 17, 2021.

¹ Ind. Code § 5-14-3-1-10.

BACKGROUND

This case involves a dispute between a Delphi city councilor and the Clerk-Treasurer over access to copies of the city's bank statements

On March 25, 2021, Delphi city council member Gayle Conner (Complainant) filed a public records request with Delphi Clerk-Treasurer Leanne Aldrich seeking the following:

January 2021 bank statements for each of the checking accounts held by the City of Delphi and their specific balances at the beginning of the year.

Aldrich acknowledged receipt of Conner's emailed request the next day. Clerk Aldrich informed Conner that she hoped to have the requested materials available within one to two weeks. In the meantime, Conner attempted to follow up with the request on a handful of occasions and never received any of the requested material.

Conner filed her complaint on May 17, 2021. Notably, she received the documents on July 2, 2021.

Clerk-Treasurer Aldrich filed a response to Conner's complaint on June 10, 2021. Aldrich asserts that unforeseen health circumstances and staffing issues led to a delay in the production of the documents, however, she did acknowledge that the material had been available since April, but no one followed up with Conner to let her know.

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. City of Delphi (City) 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 City’s public records during regular business hours. Ind. Code § 5-14-3-3(a).

Indeed, APRA contains exceptions—both mandatory and discretionary—to the general rule of disclosure. In particular, APRA prohibits a public agency from disclosing certain records unless access is specifically required by state or federal statute or is ordered by a court under the rules of discovery. *See* Ind. Code § 5-14-3-4(a). In addition, APRA lists other types of public records that may be excepted from disclosure at the discretion of the public agency. *See* Ind. Code § 5-14-3-4(b).

2. Conner’s request

The crux of the initial dispute is the timeliness for responding to a public records request with the responsive documents.

Under APRA, a public agency may not deny or interfere with the exercise of the right for any person to inspect and copy a public agency’s disclosable public records. Ind. Code

§ 5-14-3-3(a). Toward that end, the law requires an agency within a reasonable time after the request is received to either:

- (1) provide the requested copies to the person making the request; or
- (2) allow the person to make copies:
 - (A) on the agency's equipment; or
 - (B) on the person's own equipment.

Ind. Code § 5-14-3-3(b)(1)–(2). The term “reasonable time” is not defined by APRA; and thus, it falls to this office to make a determination on a case-by-case basis when a complaint is filed challenging timeliness. In doing so, this office considers the following factors: (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.

At the same time, because Conner's request was reasonably specific as a predicate, reasonable timeliness is simply defined by this office as practical efficiency. Here, it does not appear that Conner's request was overly broad or complex.

This office is certainly empathetic to difficult circumstances that give rise to unintentional delays in access. Still, a municipality should have the infrastructure in place to provide records even when personnel are out on health leave. Backup plans are always encouraged.

As mentioned before, councilpersons of a municipality should have ready access to documentation needed to effectuate their public business as officials. Records-keepers are

the integral part of the information transmission process. From the clerk-treasurer's response, it appears a subsequent records request was successful. It is my expectation that the trend continues and I genuinely hope not to field complaints between these parties again lest a more heavy-handed approach is utilized.

CONCLUSION

Based on the foregoing, it is the opinion of this office that the delay in production of records was due to circumstances out of the control of the Delphi Clerk-Treasurer yet could have been avoided with better planning and office policies.



Luke H. Britt
Public Access Counselor