
OPINION OF THE PUBLIC ACCESS COUNSELOR

STEPHEN J. MORSE,
Complainant,

v.

CITY OF JASONVILLE,
Respondent.

Formal Complaint No.
21-FC-57

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 Jasonville violated the Access to Public Records Act (APRA).¹ Mayor Larry Watters filed an answer on behalf of the City. In accordance with Indiana Code § 5-

¹ Ind. Code § 5-14-3-1-10.

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.

BACKGROUND

This case involves a dispute over what constitutes appropriate procedures for requesting access to public records, and whether the given response to an APRA request was reasonable.

On April 21, 2021, Stephen Morse (Complainant) sent a public records request via email to the Office of Mayor Larry Watters seeking copies of an ordinance creating the American Rescue Plan fund and the preliminary fiscal plan for the money to comply with certain requirements of the Office of Community and Rural Affairs (OCRA) block grant funding of a wastewater project.

On May 12, 2021, after not receiving a response to the request, Morse contacted the Mayor's office by phone to inquire about the status of his request. According to the complaint, Mayor Watters informed the Complainant "that he has no intention of supplying [him] these public records."

In turn, Morse filed his complaint that same day on May 12, 2021.

On June 10, 2021, Mayor Watters responded to Morse's complaint stating that the Complainant was never denied access to records, rather he was informed that public records were not kept in the Mayor's office.

According to Mayor Watters' perspective, Mr. Morse's expectation was that the Mayor should retrieve these records

for him rather than him requesting them through the proper channels. It is unclear whether Mayor Watters ever explained to the Complainant what the “proper channels” are for requesting a public record from the City of Jasonville. Likewise, the Mayor did not elucidate that process for this office, merely claiming that the Mayor’s office does not keep any public records on site.

ANALYSIS

1. The Access to Public Records Act

The Access to Public Records Act 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 City of Jasonville 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 City’s public records during regular business hours. Ind. Code § 5-14-3-3(a).

2. Public records requests generally

There is not a dispute that Morse served a public records request on the Mayor’s office, only that the Mayor was not the custodian of the records.

It is unclear exactly what process is deemed acceptable for a public records request in Jasonville. Its website and social media pages appear to be inactive. No instructions were found (or provided) for submitting a request.

Even if there is an established, conspicuous protocol for a records request, a written request must always be accompanied by a written response, even if that response is a denial. See Ind. Code §§ 5-14-3-9(c) & (d).

Therefore the Mayor's office, at the very least, should have directed Mr. Morse where to submit a request if the document is germane to the city's public business. Even if it was in another location – a clerk-treasurer's or council president's office for example – surely the Mayor has an idea where the documents could be requested.

What is more, public record is defined broadly as:

any writing, paper, report, study, map, photograph, book, card, tape recording, or other material that is created, received, retained, maintained, or filed by or with a public agency and which is generated on paper, paper substitutes, photographic media, chemically based media, magnetic or machine readable media, electronically stored data, or any other material, regardless of form or characteristics.

Ind. Code § 5-14-3-4(r). Therefore to suggest a city executive does not keep any public records on site as a memorialization or documentation of public business is a position that does not sit well with this office. While the Mayor's office may not keep a particular document immediately on-hand, it has public records.

Requests, subjectively legitimate or not, cannot simply be dismissed off-handedly. Some measure of attention should be given to appropriately fulfill or dispose of them, whatever the case may be.

If the City of Jasonville is not well-versed in the public records laws and underlying policy, we respectfully invite its public officials to review our published public access handbook or to host a training on public access conducted by the public access counselor or his staff. Free of charge, these services are provided statewide. The handbook and much more information can be found at www.in.gov/pac.

CONCLUSION

Based on the foregoing, it is the opinion of the public access counselor that the City of Jasonville violated the Access to Public Records Act.

A handwritten signature in black ink, appearing to read 'LHB', is positioned above the printed name.

Luke H. Britt
Public Access Counselor