
OPINION OF THE PUBLIC ACCESS COUNSELOR

NOAH & NIKKI SOUTHWOOD,
Complainant,

v.

TOWN OF SHELburn,
Respondent.

Formal Complaint No.
22-FC-118

Luke H. Britt
Public Access Counselor

BRITT, opinion of the counselor:

This advisory opinion is in response to formal complaints alleging that the Town of Shelburn violated the Access to Public Records Act.¹ Clerk-Treasurer Melissa Copeland filed an answer on behalf of the town. In accordance with Indiana Code § 5-14-5-10, I issue the following opinion to the formal complaints first received by the Office of the Public Access Counselor on August 2, 2022.

¹ Ind. Code § 5-14-3-1-10.

BACKGROUND

This case involves a dispute about whether the Town of Shelburn violated the Access to Public Records Act (APRA) by failing to respond to public records requests in a timely manner.

Between June and August, Noah and Nikki Southwood (Complainants) filed several public records requests with the Town of Shelburn (Town).

These requests sought, for example, meeting minutes, a “bid tab list,” receipts, revenue histories, fund reports, depository statements, cash reconcilements, appropriation reports, Profit & Loss Statements, balance sheets, salary ordinances etc.

Many of the requested records detail Town business that occurred the month prior. Consequently, the Complainants are requesting records, in some instances, immediately after they would have been created.

After each request was submitted it was acknowledged by the Clerk-Treasurer in a timely manner. In some instances, the requested documents were provided to the Southwoods only a few days after the request was made, while others took longer to fulfill or are still pending.

Since August, the Southwoods filed a total of four formal complaints arguing the Town failed to respond to their public records requests within a reasonable time.

On August 3, 2022, the Town, through clerk-treasurer Melissa Copeland, sent an email to this office explaining the ongoing situation between Shelburn and the Southwoods.

Ms. Copeland's explained that she assumed the role of Clerk-Treasurer on July 8, 2022. Prior to that the position had been filled by an interim administrator named Jane Landry, who temporarily stepped into the role after Noah Southwood resigned from the role after having held the position for 38 years. Copeland contends prior to her tenure, the Southwoods regularly submitted records requests with Ms. Landry, the most recent one having been filed shortly before Landry left the position.

For that request specifically, Copeland explained that, while Mr. Southwood had been provided an estimate for when responsive records would be made available, Ms. Landry had vacated her position before the request could be fully addressed. Therefore, the documents were not available on the date that had been indicated.

Beyond that specific request, Copeland explained that, even though she had only just started as Clerk-Treasurer, rather than grant her the opportunity to learn about her new role, the Southwoods remained insistent that responsive records must be provided within a timeframe they deemed appropriate.

In a recent follow-up conversation between Ms. Copeland and this office, she detailed how she has continued to fulfill the Complainant's records requests to the best of her ability given that there are plenty of administrative procedures, software programs, and regulatory concepts about which she is still learning. Even though she has regularly attempted to explain the situation to the Complainants, they continue to file records requests. Ms. Copeland estimates that they are submitting upwards of thirteen to fifteen requests per month.

ANALYSIS

1. The Access to Public Records Act (“APRA”)

It is the public policy of the State of Indiana that all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees. Ind. Code § 5-14-3-1. Further, 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.” *Id.*

The Town of Shelburn 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 Town’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. The Southwood requests

The requests submitted by the Southwoods all implicate records which are disclosable. To this point, records have not been *denied*, per se. Only that they have taken some time to fulfill.

Insofar as time is concerned, once a records request has been acknowledged by an agency, it has a reasonable time to respond. *See* Ind. Code § 5-14-3-3(b). Notably, APRA does not define the term “reasonable time.”

This office has long recognized that certain factors are relevant in evaluating whether an agency is following APRA's reasonable time standard.

These factors include, but are not limited to, the following:

- The size of the public agency;
- The size of the request;
- The number of pending requests;
- The complexity of the request; and
- Any other operational considerations that may reasonably affect the public records process.

Here we have a situation with a new-to-the-job public official who has yet to get her feet under her in regard to the position when she is faced with an onslaught of records requests. Again, the records are disclosable, but the manner in which they are being sought is not practical.

The public records act itself states that a public agency shall regulate any material interference with the regular discharge of the functions or duties of the public agency. See Ind. Code § 5-14-3-7(a). This does not mean that a public records request can simply be ignored, but rather is cognizant that a public official has many duties to discharge. While public access and records fulfillment should be priorities, they are not necessarily *the only* priorities.

By a similar token, it is true that the Town Clerk works for the public, but not exclusively for any one individual member of the public.

The benchmark in this case as far as reasonableness is concerned is not “as swiftly as possible” but rather “as efficient as possible under the circumstances.”

CONCLUSION

Based on the foregoing, it is the opinion of this office that the Town of Shelburn did not violate the Access to Public Records Act.

A handwritten signature in black ink, appearing to read 'LH Britt', with a stylized flourish at the end.

Luke H. Britt
Public Access Counselor

Issued: October 18, 2022