
OPINION OF THE PUBLIC ACCESS COUNSELOR

BROOKE E. PERKINS,
Complainant,

v.

TOWN OF ELIZABETHTOWN,
Respondent.

Formal Complaint No.
22-FC-145

Luke H. Britt
Public Access Counselor

BRITT, opinion of the counselor:

This advisory opinion is in response to a formal complaint alleging that the Town of Elizabethtown violated the Access to Public Records Act.¹ Clerk-Treasurer Shirley Nugent filed an answer on behalf of the Elizabethtown. 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 October 6, 2022.

¹ Ind. Code § 5-14-3-1-10.

BACKGROUND

This case involves a dispute about whether Town of Elizabethtown violated the Access to Public Records Act (APRA) by charging a copy fee of \$1.00 per page for public records.

On September 15, 2022, Brooke Perkins (Complainant) emailed Elizabethtown Clerk-Treasurer Shirley Nugent requesting copies of the town's ordinances.

The next day, Nugent replied to Perkins' email. Nugent asked Perkins to complete a written public request form specifying which ordinances she wanted copied. Nugent also informed Perkins that the copy fee for town ordinances is \$1.00 a page. Nugent noted that once payment was received the copies would be mailed to her.

On October 6, 2022, Perkins filed a formal complaint with this office arguing Elizabethtown's \$1.00 per page copy fee violates APRA.

On October 7, 2022, Elizabethtown, through Clerk-Treasurer Nugent, emailed an answer to Perkin's complaint denying any violation of the APRA. Essentially, Nugent disputes the complaint allegations and defends her actions by pointing to the town's fee schedule, which explicitly states that copies of ordinances are \$1.00 per page.

Notably, Nugent argues that it would be unreasonable for her to copy the entire three-inches-thick ordinance book if Perkins was unable to identify the specific ordinance, she wanted copied. During a phone conversation, Perkins asserted that Nugent has often made it difficult for residents to request public records. Perkins also contends that she has never seen or been made aware of a physical book of

ordinances. Furthermore, Perkins explains that she was under the impression that Nugent expected her to select specific ordinances without first being able to review a comprehensive list of all the ordinances passed in the Town of Elizabethtown.

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 Elizabethtown 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. Public records fee schedule

The crux of this complaint is the \$1.00 per page copy fee that Elizabethtown charges for copies of town ordinances. Simply put, Elizabethtown charges a copy fee for public records that exceeds the amount authorized by APRA.

APRA explicitly caps the amount that most public agencies may charge for black and white copies of regular sized paper records at \$.10 per page:

...The fee for copying documents may not exceed the greater of: (1) ten cents (\$.10) per page for copies that are not color copies...

Ind. Code § 5-14-3-8(d). If the Elizabethtown council—as the town’s fiscal body—set this fee by ordinance, the ordinance is out of step with state statute. As a result, this office recommends the town revise its copy fee schedule consistent with APRA and this opinion.

As a final aside, Elizabethtown’s practice of requiring a requester to use a specific form when requesting public records is authorized by APRA. *See* Ind. Code § 5-14-3-3(a)(2).

CONCLUSION

Based on the foregoing, it is the opinion of this office that the Town of Elizabethtown's fee schedule for copies of town ordinances violates the Access to Public Records Act.



Luke H. Britt
Public Access Counselor

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