



STATE OF INDIANA

MICHAEL R. PENCE, Governor

**PUBLIC ACCESS COUNSELOR
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June 21, 2013

Ms. Deborah M. Rodriguez,
203 Clinton Street
Lowell, IN 46356

Re: Formal Complaint 13-FC-170; Alleged Violation of the Access to Public Records Act by the Town Redevelopment Commission of the Town of Cedar Lake

Dear Ms. Rodriguez,

Please accept this letter as a response to your formal complaint alleging that the Town Redevelopment Commission of the Town of Cedar Lake ("Town") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et. seq.* Mr. Ian Nicolini, Town Manager, responded on behalf of the Town Redevelopment Commission. His response is enclosed for your reference. Pursuant to Ind. Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on June 14, 2013.

BACKGROUND

Your complaint alleges that the Town violated the Access to Public Records Act by failing to produce records within a reasonable time frame and also that the town claimed an exception to the APRA due to their alleged status as a local economic development organization. See Ind. Code § 5-14-3-4(b)(5)(A).

On May 10, 2013 you made a request to the Town of Cedar Lake to produce records relating to "the 133rd Avenue Road Improvement project". The request, postmarked May 11, 2013, was received by the Town Manager, Mr. Ian Nicolini, on May 20, 2013. Later on May 20, 2013 the Town of Cedar Lake, by way of Mr. Ian Nicolini, responded to your letter and directed you to complete the Town's Request for Inspection or Copying of a Public Record form. You completed that form and the Town received it on May 24, 2013. On the date the request form was received, the Town responded via First Class Mail acknowledging receipt of the request stating that a status update would be provided within ten days.



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The Town followed up with an update and an amended status update on June 3, 2013 with assurance that an additional update would be provided within ten days. On June 14, 2013 the Town denied your public records request citing an exemption based upon their status as a local economic development commission.

ANALYSIS

The public policy of the 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.” See Ind.Code § 5-14-3-1. The Town of Cedar Lake Town Redevelopment Commission is a public agency for the purposes of the APRA. See Ind. Code § 5-14-3-2. Accordingly, any person has the right to inspect and copy the Town’s public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. See Ind. Code § 5-14- 3-3(a).

A request for records may be oral or written. See Ind. Code § 5-14-3-3(a); § 5-14-3-9(c). If the request is delivered in person and the agency does not respond within 24 hours, the request is deemed denied. See Ind. Code § 5-14-3-9(a). If the request is delivered by mail or facsimile and the agency does not respond to the request within seven (7) days of receipt, the request is deemed denied. See Ind. Code § 5-14-3-9(b). A response from the public agency could be an acknowledgement that the request has been received and information regarding how or when the agency intends to comply.

The APRA does not impose a specific time requirement within which public agencies must produce records responsive to a request but only provides that responsive records be disclosed within a reasonable time. See Ind. Code § 5-14-3-3(b). Your request, postmarked May 11, 2013, was denied on June 14, 2013 and the Town provided several updates in the interim. This constitutes a reasonable responsive timeframe for the Town to make a final determination as to your request. Additionally, the Town, at its discretion, may require that the request be on a form developed specifically for that public agency. See Ind. Code § 5-14-3-3(a)(2). This requirement caused an additional, but permissible, brief delay.

The Town also alleges that your public records request regarding the *133rd Avenue Road Improvement project* and related materials may be denied from public access at the Town’s discretion according to the APRA’s exception of local economic development commissions under Ind. Code § 5-14-3-4(b)(5)(A). The relevant statutory authority states the exceptions for local economic development record disclosures as follows:



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The following public records are excepted from section 3 of this chapter and may not be disclosed by a public agency, unless access to the records is specifically required by a state or federal statute or is ordered by a court under the rules of discovery:...Records relating to negotiations between the Indiana economic development corporation, the ports of Indiana, the Indiana state department of agriculture, the Indiana finance authority, an economic development commission, **a local economic development commission (as defined in IC 5-28-11-2(3))**, or a governing body of a political subdivision with industrial, research, or commercial prospects, if the records are created while negotiations are in progress.

Emphasis added.

Furthermore, Ind. Code § 5-28-11-2 defines a “local economic development corporation” as follows:

- (1) An urban enterprise association established under IC 5-28-15 (or IC 4-4-6.1 before its repeal).
- (2) An economic development commission established under IC 36-7-12.
- (3) A nonprofit corporation established under state law whose primary purpose is the promotion of industrial or business development in Indiana, the retention or expansion of Indiana businesses, or the development of entrepreneurial activities in Indiana.
- (4) A regional planning commission established under IC 36-7-7.
- (5) A nonprofit educational organization whose primary purpose is educating and developing local leadership for economic development initiatives.
- (6) Other similar organizations whose purposes include economic development and that are approved by the corporation.

The Town of Cedar Lake is a municipal corporation as defined by Ind. Code § 5-10-9-1 and the Town Redevelopment Commission is an organization commissioned by the Town of Cedar Lake and is dedicated to enhancing the Town’s economic vitality. Therefore the Town Redevelopment Commission is an entity whose primary purpose falls under subsection (6) of the above statute, and has been established as a local economic development corporation by the municipal corporation.

Records related to the negotiations between the Town and property owners for the purposes of the economic development are exempt from disclosure at the Town’s discretion if they are created in the process of said negotiations. The public is, however,



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entitled to review terms of the final offer of public financial resources maintained by an economic development commission *after* negotiations with that prospect have terminated. See Ind. Code 5-14-3-4(b)(5)(B). When negotiations have terminated, the terms of the final offer are not subject to the exemption.

As for the timeliness issue regarding the initial response, the Town has stated that the reason for the ten-day window from when the original request was mailed versus the statutory seven-day requirement in Ind. Code § 5-14-3-9(b) may have been due to the Town alleging the omission of their Post Office Box number on your addressed envelope. It is unclear if the delay in delivery to the Town until May 20th, 2013 was caused by this omission. Documentation submitted by the town demonstrates that a file-stamp was placed on the request showing it as being received on May 20th, 2013. The Public Access Counselor, however, is not a finder of fact. See *Opinion of the Public Access Counselor 10-FC-15*. A violation of the seven-day statutory response requirement is not raised in your Formal Complaint.

CONCLUSION

Your initial request on May 10, 2013 requested “any offers or appraisals” involving the parties. That statement suggests that the request was for materials and records created during negotiations. It is the opinion of this office that a non-response by the Town within seven days would constitute a denial pursuant Ind. Code § 5-14-3-9(b). A denial based upon the negotiation information request is deemed appropriate by this office if negotiations were underway at the time of the request.

Regarding the request on the Town’s Official Public Records Request Form, the Office of the Public Access Counselor is not aware of the progress of the project in question, its stage of completion, or any ongoing activities of the Town of Cedar Lake Redevelopment Commission. If there are final terms of any offers related to the project, however, those records would need to be disclosed under APRA upon a request of sufficient specificity. Compliance with the APRA as it relates to the Town’s response is contingent upon the finality of these negotiations.



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Best Regards,

A handwritten signature in black ink, appearing to read "L. Britt", is written over the printed name.

Luke. H. Britt
Acting Public Access Counselor

cc: Ian Nicolini