
OPINION OF THE PUBLIC ACCESS COUNSELOR

MELISSA S. ELMORE,
Complainant,

v.

HENRY COUNTY PLANNING COMMISSION
Respondent.

Formal Complaint No.
17-FC-147

Luke H. Britt
Public Access Counselor

BRITT, opinion of the Counselor:

This advisory opinion is in response to the formal complaint alleging the Henry County Planning Commission (“Commission”) violated the Access to Public Records Act (“APRA”). Ind. Code §§ 5-14-3-1-10. 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 June 27, 2017.

BACKGROUND

On April 28, 2017, Melissa Elmore (“Complainant”) hand-delivered a public access request to the Commission requesting the following information:

All records supporting Darrin Jacobs’ [Zoning Administrator] claim made on 4-20-17 during Stephen Snyder’s [Attorney] argument against a MET [Meterological Evaluation Tower] tower. Snyder claimed the MET tower was not a commission approved use. Jacobs’ claimed the argument had been made two years ago and was overruled. Please provide proof of Jacobs’ claim.

Jacobs acknowledged the request on the same day and forwarded it to the county attorney. On May 9, 2017, Jacobs sent a letter to the Complainant asking her to narrow her request and provide more details on the records being sought. On May 19, 2017, Elmore sent a lengthy email—replete with references to legal authorities and other sources—to Jacobs disputing the assertion that her request was too vague. The Complainant contends that she received no response to that email; and, as a result filed a formal complaint with this office on June 26, 2017.

The Commission denies that an APRA violation has occurred. In its view, the Complainant’s records request was too general in nature and failed to identify any single record or set of records in particular. The Commission also contends that a certain portion of any records that could possibly be responsive may be nondisclosable as attorney-client communication.

ANALYSIS

APRA states that “(p)roviding persons with information is an essential function of a representative government and an inte-

gral 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 Henry County Planning Commission is a public agency for the purposes of the APRA. Ind. Code § 5-14-3-2(n). So, any person has the right to inspect and copy the Commission’s disclosable public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. Ind. Code § 5-14-3-3(a).

In general, if the requested record (1) is a public record from a public agency; (2) is not exempt from disclosure; and (3) is identified with reasonable particularity, the public agency cannot deny access to the record under APRA. Notably, the term *reasonable particularity* is not defined under APRA. Even so, if a public agency can determine what record a person is seeking, then the request will likely meet the standard for reasonable particularity.

The necessity of a reasonable particularity standard is to establish a baseline specificity that allows a public agency to efficiently respond to a records request and effectively take guesswork out of the equation. A non-specific request will often lead to records that are off-point or non-responsive to the request. Hence the need for particularity.

A red flag that a request is lacking reasonable particularity is the use of the language “any” or “all.” This usually—but not always—is an indicator that a person is speculating that a record may exist, but cannot pinpoint a document memorializing a subject matter. While a document does not have to be identified with pinpoint accuracy, there should be enough information contained within a request to give the public agency a more-than-general idea of what is being sought.

In the present case, it does not appear as if the Complainant has identified such a record. The request is indeed vague. For example, a request for “minutes from a public meeting approximately two years ago in which MET towers were discussed and subsequently dismissed,” would likely be considered to be specific. Conversely, a request for “all records supporting a claim” or to “provide proof” is not. The May 9, 2017, letter inviting the Complainant to narrow her request was appropriate to the request in that regard.

That being said, as for the statement that communication between Planning Commission Staff, the Commission, or County Attorneys is privileged is an over-generalization of the law. While certain communication can be considered deliberative or privileged, it is not necessarily so just because documented communication exists. For an exception to disclosure to apply, it must be either *deliberative material* (speculative or opinion-based statements made for the purposes of decision-making) or communication between a client and an attorney in the scope of his or her representation. This determination is typically made on a case-by-case basis after a record has been identified, not before.

CONCLUSION

Based on the foregoing, it is the Opinion of the Indiana Public Access Counselor the Henry County Planning Commission did not violate the Access to public Records Act.

A handwritten signature in black ink, appearing to be 'LH Britt', written in a cursive style.

Luke H. Britt
Public Access Counselor