



STATE OF INDIANA

MICHAEL R. PENCE, Governor

PUBLIC ACCESS COUNSELOR
LUKE H. BRITT

Indiana Government Center South
402 West Washington Street, Room W470
Indianapolis, Indiana 46204-2745
Telephone: (317)233-9435
Fax: (317)233-3091
1-800-228-6013
www.IN.gov/pac

December 19, 2013

Mr. Hershel Houk
Via email

Re: Formal Complaint 13-FC-329; Alleged Violation of the Access to Public Records Act by the Greensburg Clerk-Treasurer

Dear Mr. Houk,

This advisory opinion is in response to your formal complaint alleging the Greensburg Clerk-Treasurer ("Clerk-Treasurer") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et. seq.* Bridgett Weber, the Clerk-Treasurer responded to your complaint. Her response is enclosed for your review. 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 November 19, 2013.

BACKGROUND

Your complaint alleges the Greensburg Clerk-Treasurer violated the Access to Public Records Act by denying producing records responsive to your request.

On or about October 10, 2013, you requested several records from the Clerk-Treasurer's Office. She acknowledged your request on the same day stating she would gather the information for you. It is unclear if this particular records request was actually fulfilled; however, that is not the basis of your complaint. When Ms. Weber called you on November 8, 2013 to update you as to the status of your October 10, 2013 request, you made an additional request pertaining to another public employee. It does not appear from the documentation submitted this request had been made prior to the November 8, 2013 telephone conversation.

It is also disputed whether the Clerk-Treasurer denied the access during your investigation or whether she told you she would look into it. In any case, the information was not provided to you by November 19, 2013 when you filed your complaint with this Office.

ANALYSIS

The public policy of the APRA states that "a (p)roviding persons with the 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 Greensburg Clerk-Treasurer is a public agency for the purposes of the APRA. See Ind. Code § 5-14-3-2(n)(1). Accordingly, any person has the right to inspect and copy the Clerk-Treasurer’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 the request has been received and information regarding how or when the agency intends to comply.

The APRA is clear that personnel files are to be generally withheld from disclosure under Ind. Code § 5-14-3-4(a)(8) except for:

- (A) the name, compensation, job title, business address, business telephone number, job description, education and training background, previous work experience, or dates of first and last employment of present or former officers or employees of the agency;
- (B) information relating to the status of any formal charges against the employee; and
- (C) the factual basis for a disciplinary action in which final action has been taken and that resulted in the employee being suspended, demoted, or discharged.

The Clerk-Treasurer has indicated in her response the employee’s information from Subsection (1) will be provided to you. It is my hope this has already happened. Secondly, she indicates there were no formal charges, nor any disciplinary action leading to suspension, demotion or discharge.

In the event the Clerk-Treasurer outright denied your request for all information relating to the employee during the November 8, 2013 conversation, the Clerk-Treasurer would have been in violation of the Access to Public Records Act. I cannot state conclusively if that was the case.

You filed your formal complaint only seven business days after the conversation regarding the personnel file. Seven days is well within the reasonable time frame for an agency to produce requested records. Therefore, if the Clerk-Treasurer was merely trying “to find out” if the information could be released, as she alleges, then no violation would exist.

I decline in this Opinion to make a determination either way, however, I would encourage the Clerk-Treasurer to produce the employee's disclosable records as soon as possible, if this has not already been done.

Regards,

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

Luke H. Britt
Public Access Counselor

Cc: Clerk-Treasurer Bridgett Weber