
OPINION OF THE PUBLIC ACCESS COUNSELOR

ISAIAH ODAME,
Complainant,

v.

TOWN OF THORNTOWN,
Respondent.

Formal Complaint No.
22-FC-135

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 Thorntown violated the Access to Public Records Act.¹ Attorney Amy Nooning 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 complaint received by the Office of the Public Access Counselor on September 21, 2022.

¹ Ind. Code § 5-14-3-1-10.

BACKGROUND

This case involves a dispute about whether the Town of Thorntown (Town) violated the Access to Public Records Act (APRA) by failing to acknowledge or respond to a request for public records.

On or about September 9, 2022, Isaiah Odame (Complainant) submitted a public records request via an email to the Thorntown Police Department, the Town clerk-treasurer and the Town council president. The request was also submitted via telephone. The request, dated September 6, sought the following:

1. All bodycam footage, dashcam recordings, audio and video, unredacted from (Deputy Marshal, D. Babcock, ID 402 & Deputy Marshal, R. Vierbutz ID: 403.) For an incident that occurred on Aug. 31st, 2022. Time being at or around 2:00AM, Location: U.S. Route 52, footage need not be location specific, only time bound.
2. General Department operating procedure, if file is too large let me know and I will narrow my request.

The Town council vice president responded via email on the same day.

On September 16, 2022, Mr. Odame filed a formal complaint with this office, alleging that the Town violated the APRA because he never received an acknowledgement or a response to his request for records specifically from the police department. Odame argues that the Thorntown Police Department and clerk-treasurer is obligated to individually respond to identical requests, mutually exclusive from the council's acknowledgement.

On October 7, 2022, Attorney Amy Noonning submitted a response on behalf of the Town, reiterating that on September 9, 2022, about an hour and a half after receiving Mr. Odame's email request, the council vice president sent a reply on behalf of the Town acknowledging the request. Odame was informed that the Town would begin reviewing its files to locate any responsive records. Ms. Noonning included a timestamped copy of that email as proof.

The body worn camera footage was released to Odame on September 9, however, the "general department operating procedure" portion of his request was still pending at the time of Odame's rebuttal.

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 Thorntown (Town) 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. Acknowledgment of requests

Once a public records request is submitted, the burden shifts to the receiving public agency to acknowledge the request. Odame alleges he did not receive appropriate acknowledgement.

Pursuant to Indiana code sections 5-14-3-9(b) & (c), a requester who submits a public records request in-person is entitled to an acknowledgment within twenty-four hours while a remote submission allows seven days for an acknowledgement.

Odame contends that while he received an acknowledgement from the Town council, he did not receive one from the clerk-treasurer nor from the police department even though the requests were identical.

A town is a public agency pursuant to Indiana code section 5-14-3-2(q)(2). Departments of a town are not singular agencies, but rather exist under the umbrella of the political subdivision.

While an argument could conceivably be made that the clerk-treasurer had an individual obligation to respond as a separately elected official, the police department is an instrumentality of the town and not a free-standing agency.

Therefore, when Odame received a same-day acknowledgment from the Town council vice president, for all intents and purposes, the Town of Thorntown satisfied its acknowledgment obligation for Odame's request. Subsequent acknowledgments would have been superfluous and unnecessary in this context.

2. Reasonable time

APRA requires a public agency to provide public records to a requester within a reasonable time after receiving a request. Ind. Code § 5-14-3-3(b). Notably, APRA does not define the term "reasonable time."

The determination of what is a reasonable time for production depends on the public records requested and circumstances surrounding the request. Undoubtedly, certain types of records are easier than others to produce, review, and disclose. As a result, this office evaluates these issues case by case.

Here, the request is two-fold: body worn camera footage and a police department operating procedure.

The body worn camera footage was released to Odame on September 29, 2022, twenty calendar days (and fourteen business days) after his request. By any objective standard, this is not an unreasonable amount of time to produce footage.

The latter portion may be a different matter altogether. At the time of this writing, it is unknown whether it has been provided.

It is unclear what exactly Odame means by “general department operating procedure”. That stated, the Town did not push back and ask for clarification on that point. Therefore, it can be argued that the Town knew what Odame meant by his request and some kind of standard operating procedure manual exists and will be produced at some point.

The recommendation of this office is that the Town, if it has not done so already, produce its standard written procedures as soon as possible with any sensitive material – such as investigatory methodology – redacted.

CONCLUSION

Based on the foregoing, it is the opinion of this office that the Town of Thorntown complied with the Access to Public Records Act with respect to the body worn camera footage. There has not been enough information provided to make a value judgment as to the remainder of the complainant's request.



Luke H. Britt
Public Access Counselor

Issued: December 1, 2022