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**OPINION OF THE PUBLIC ACCESS COUNSELOR**

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CRAIG R. HENDRY,  
*Complainant,*

v.

CITY OF CLINTON,  
*Respondent.*

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Formal Complaint No.  
23-FC-100(a)

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Luke H. Britt  
Public Access Counselor

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BRITT, opinion of the counselor:

This advisory opinion is in response to the formal complaint alleging the City of Clinton violated the Access to Public Records Act.<sup>1</sup> City Attorney Scott Craig filed an answer on behalf of the city. 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 25, 2023.

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<sup>1</sup> Ind. Code § 5-14-3-1-10.

## **BACKGROUND**

This case involves a dispute regarding the timeliness of the response to a number of public records requests filed with a municipality.

From August 16 through September 12, 2023, Complainant Craig Hendry filed a series of five public records requests to the City of Clinton for a total of ten subsets of records. All of them will not be recited here, however, they ranged from fairly simple (a copy of the City budget) to more complex (four days' worth of security footage & 13 years of building permits issued to an individual).

Based on the information provided, all received an appropriate and timely acknowledgement. Nevertheless, Hendry contends the City took an excessive amount of time to produce the records by the time of the filing of his formal complaint on September 25.

The City responded on November 13 advising this office that the totality of the requests have been addressed by a package of information sent to Hendry that same day. While some of the records were produced, the City invited Hendry to narrow down others to meet standards of reasonable particularity.

## ANALYSIS

### 1. The Access to Public Records Act

The Access to Public Records Act (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.” Ind. Code § 5-14-3-1. The City of Clinton 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 city’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). This case involves the applicability of APRA’s fee schedule compared to a local ordinance.

### 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 large, but that does not necessarily disqualify it from legitimacy. The City—at least initially—decides whether a public records request (or portions of it) lack the specificity required by APRA.<sup>2</sup>

Therefore, accepting a request, even of significant magnitude, shifts the burden to the public agency for an efficient, reasonable response under APRA. This office has stated in the past that piecemeal disclosures of larger requests are preferable compared to waiting for the entirety of the records to become available.<sup>3</sup>

Judging by the relative size and complexity of the totality of the requests, it may have taken several months to ultimately retrieve and disclose all the requested records.

Often, compound requests filed over the course of several weeks only serves to delay the time in which an agency responds. Some material would have also been available elsewhere (Indiana Gateway, for example, would have copies of the City's budget and some expenditures and grant information).

Other circumstances come into play when analyzing timeliness as well. The size of a municipality plays a part. Clinton appears to employ approximately only twenty non-fire & police full-time employees. Timing is a consideration as well. The requests were submitted during election season. Historically, this amplifies the number of public records requests submitted, sometimes by a significant degree. This

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<sup>2</sup> Ind. Code § 5-14-3-3(a)(1).

<sup>3</sup> *Opinion of the Public Access Counselor*, 15-FC-88 (2015).

office is aware of other requests submitted to Clinton by others during the same time.

Given the totality of the circumstances and the records requests themselves, the City does not appear to be tragically neglectful in its public records responsibilities, nor are its responses to Hendry dilatory.

## CONCLUSION

Based on the foregoing, it is the opinion of the public access counselor that the City of Clinton did not violate the Access to Public Records Act.



Luke H. Britt  
Public Access Counselor

Issued: November 27, 2023