



STATE OF INDIANA

MICHAEL 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

April 22, 2014

Mr. Rich Volbrecht
9221 Parkway Dr.
Highland, IN 46322

Re: Informal Inquiry 14-INF-10

Dear Mr. Volbrecht,

This is in response to your informal inquiry regarding the handling of public records requests by an unspecified public agency ("Agency"). Pursuant to Ind. Code § 5-14-4-10(5), I issue the following informal opinion in response to your inquiry. My opinion is based on applicable provisions of the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* and public policy provisions. You present four issues. They will be addressed in the order you presented them in your request.

Issue 1

On February 27 and March 5, 2014, you submitted a public records request to an unnamed agency for copies of all the expenses of several government officials who attended seminars early in 2014. By March 10, 2014, the Agency had provided you with records responsive to your request. Amongst that production, you received seven food receipts. Two of them were itemized and five were credit card receipts. You have not provided a copy of your original access to public records request, so it is unclear if you specifically requested itemized copies or merely the general receipts.

You presented the issue of the receipts at a March 18, 2014 public meeting. You presented a concern and cited Ind. Code § 5-11-10-1.6(c) requiring a fully itemized invoice for reimbursement. An administrator then acknowledged he was in possession of the remaining five itemized receipts and presented them to the board. Again, your complaint is unclear whether they were in the possession of the Agency at the time of your request or if they were turned in after the production of your records had been completed.

If I am interpreting your inquiry correctly, you seem to suggest the receipts were turned in after the general receipts were provided to you. The itemized receipts were not made

available for your inspection immediately after they were turned in. You ask whether you would need to make a subsequent request for the itemized receipts.

The Access to Public Records Act does not necessarily contemplate the production of future records. The itemized receipts were not in the custody of the Agency until they were turned in by the government official. If the Agency made a good faith effort to respond expeditiously to your request within a reasonable time, they cannot be expected to hold open your request indefinitely until all records trickle in. You seem to interpret this as meaning you would need to submit an access request “every single day until the governmental entity DOES received the Public Records” you sought on February 27 and March 5, 2014. That is not the case. You can certainly make requests for records *available at the time of the request*. A public agency is only required to produce records in its possession at the time and not hold open a request in perpetuity. There must be a finite time period in which the Agency is expected to respond. You are entitled to the remainder of the itemized receipts upon a subsequent request.

Issue 2

At the March 18, 2014 public meeting, the unnamed Agency’s president expressed her belief that the Agency maintain a log of all of your individual public records requests and create a matrix of employee hours and costs needed to search, retrieve, and compile the documents you seek. This summary would be publicly announced at each meeting.

I do question the propriety of this action. It would appear to publicly discriminate you as a record seeker and possibly be deterrence by shaming. You are entitled to every disclosable record you seek, regardless of whether you are a “serial requestor”. An agency should not discourage the document request process. I do not take exception of maintaining a log particular to you; however, I disagree with the unsolicited publication of the material at each public meeting. I am not personally aware of any antagonism between you and the Agency; however, I can reasonably surmise there is some concern on the Agency’s part over your possible frequent requests. There is no limit to the amount of material or the number of records sought. However, you must be mindful that it is not the sole responsibility of the Agency to respond to record requests. They must also carry out the duties and responsibilities to which they are charged. A public agency shall protect and regulate any material interference with the regular discharge of the functions or duties of the public agency or public employees. See Ind. Code § 5-14-3-7.

How this particular Agency tracks your specific requests is at the discretion of the Agency. I do caution against any action which would single you out or prejudice you at an open public meeting. But if an Agency is spending an extraordinary amount of time responding to an individual constituent, itemizing and logging that time involved may be necessary to monitor the stewardship of public resources.

Issue 3

As mentioned above, there seems to be an amount of enmity between you and the Agency (or at least its president). You have indicated the president of the Agency “regularly attacks [you] indirectly or directly for making needless and unnecessary [Access to Public Records Act] requests [during] public meetings.”

Once again, I do not condone any action or inaction which would be a deterrent to public access. The scenario you present is one of local governance and one over which I have no purview. To answer your question directly, of course the APRA does not give a governmental entity license for *ad hominem* attacks. At the same time, civility and decorum work both ways. I do not have a response from the public agency referenced in this Opinion, so I do not know if you address the Agency with any amount of deference. But I do know the most effective way of working with government officials (and anyone else for that matter) is to use diplomacy and tact. Similarly, the intent of the APRA is certainly not a license for bullying and harassing public officials.

It is unfortunate I even have to address this issue, but as Public Access *Counselor*, I would encourage both parties to work civilly to resolve access issues.

Issue 4

Your final item of contention regards what I will refer to as a standing request for public records. Similar to the first issue discussed above, the APRA does not contemplate or require production of documents pursuant to an ongoing request. You state in the past you have submitted APRA requests to the Agency in January for all audio recordings of their meetings for the entire year. The Agency has refused to do so.

Again, the APRA only applies to documents currently in the possession, custody or control of a public agency at the time of the request. You are basically making a request for something which does not yet exist and has not yet been created. I am familiar with public agencies that honor these types of requests as a courtesy, but they are not obligated to do so. I do not believe the legislators who authored the APRA intended to place an obligation upon public agencies to hold open requests indefinitely. If there are twelve meetings in a year, then the Agency can require you to make twelve separate public records request for audio recordings of those meetings *after* the meeting is held. They would then be required to produce them within a reasonable time.

Please don't hesitate to contact me with any further questions.

Best regards,

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

Luke H. Britt
Public Access Counselor