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**OPINION OF THE PUBLIC ACCESS COUNSELOR**

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STEPHEN ROBERTS, ET. AL.,  
*Complainant,*

v.

CITY OF NEW ALBANY,  
*Respondent.*

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Formal Complaint No.  
19-FC-105

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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 a formal complaint alleging the City of New Albany violated the Access to Public Records Act.<sup>1</sup> New Albany did not respond to the complaint despite an invitation to do so. 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 October 7, 2019.

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<sup>1</sup> Ind. Code § 5-14-3-1 to 10.

## BACKGROUND

This case involves a dispute over a municipality's lack of responses to multiple public records requests.

In August 2019, the three Complainants in this cause filed multiple public records requests with the City of New Albany.<sup>2</sup> The Complainants say none of the requests were acknowledged, denied, or answered with responsive records.

This office solicited a response from New Albany on October 7, 2019 by sending letters to the City Attorney, the City Controller, and the City Parks Director<sup>3</sup> pursuant to Indiana Code section 5-14-5-8. None responded.

## 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. 5

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." *Id.* The City of New

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<sup>2</sup> For efficiency and ease of response, these complaints were consolidated herein. Complainants are Stephen Roberts, Irvin Stumler and Heather Rae Peters.

<sup>3</sup> The Controller and Parks Director were recipients of several of the public records requests.

Albany is a public agency for the purposes of APRA; and thus, subject to the act's requirements. Ind. Code § 5-14-3-2(n). Unless otherwise provided by statute, any person may inspect and copy the City's public records during regular business hours. Ind. Code § 5-14-3-3(a).

The requests sought public records regarding advertising and marketing, the City's water park, and legal expenses, none of which involve particularly sensitive information. While they are not perfectly crafted requests – some may require an extent of narrowing – they are not so insufficient as to be summarily ignored.

A request is considered denied when seven days elapse from the date the public agency receives the request. *See* Ind. Code § 5-14-3-9(b)(2). There is some evidence the City received at least one of the requests in the Parks Department as an administrative support member did provide a receipt. Otherwise, based on the information provided, the requests went unaddressed.

When a request is overlooked for a certain unreasonable period of time, it is considered denied. This does not give an agency license to simply disregard a request, however. A denial of a written records request must be accompanied by a written denial and statutory justification for said denial. *See* Ind. Code § 5-14-3-9(d)(2). The lack of this response constitutes a violation of the Access to Public Records Act.

Furthermore, pursuant to Indiana code section 5-14-5-5, a public agency shall cooperate with the public access counselor in any investigation or proceeding when a complaint is filed. In the absence of such cooperation, this office has no choice but to find the City in noncompliance.

## **CONCLUSION**

Based on the foregoing, it is the opinion of the Public Access Counselor that the City of New Albany violated the Access to Public Records Act.

A handwritten signature in black ink, appearing to read 'LH Britt', with a long, sweeping underline.

**Luke H. Britt**  
Public Access Counselor