



STATE OF INDIANA

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January 20, 2015

Ms. Wendella K. Brant
9240 East 350 South
Zionsville, IN 46077

Re: Formal Complaint 14-FC-323; Alleged Violation of the Access to Public Records Act by the Town of Zionsville

Dear Ms. Brant,

This advisory opinion is in response to your formal complaint alleging the Town of Brownsburg ("Town"), violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et. seq.* Counsel, Mr. Mark Crandley, Esq., has responded and his reply is attached 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 December 24, 2014.

BACKGROUND

Your complaint dated December 22, 2014 alleges the Town of Zionsville violated the Access to Public Records Act (Ind. Code § 5-14-3) by failing to produce records responsive to your request.

On or about December 16, 2014, you requested from the Town all law firm invoices for the Year of 2014. Specifically, you seek the itemized diary entries for each specific legal service, the parties involved and the time spent on each item. You were provided the expenditure amounts, but not the itemized entries.

The Town responded by arguing while the amounts spent by the Town are public records and information available to the public, the itemized entries may be withheld as attorney-client communication.

ANALYSIS

The public policy of the APRA states that "a (p)roviding person 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.” See Ind. Code § 5-14-3-1. The Town of Zionsville (Town) is a public agency for the purposes of the APRA. See Ind. Code § 5-14-3-2(n)(1). Any person has the right to inspect and copy the Town’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).

Ind. Code § 5-14-3-4(a)(1) states that documents must be withheld if they contain information which has been declared confidential by Indiana Code or Federal statute. Ind. Code § 34-46-3-1 provides a statutory privilege regarding attorney and client communications. Indiana courts have also recognized the confidentiality of such communications:

The privilege provides that when an attorney is consulted on business within the scope of his profession, the communications on the subject between him and his client should be treated as confidential. The privilege applies to all communications to an attorney for the purpose of obtaining professional legal advice or aid regarding the client's rights and liabilities.

Hueck v. State, 590 N.E.2d 581, 584 (Ind. Ct. App. 1992) (citations omitted).

An invoice describing legal services rendered could conceivably be considered to fit into the description offered by the *Hueck* Court. This is consistent with prior opinions from this Office. Please consider the *Opinion of the Public Access Counselor 06-FC-62* wherein Counselor Davis opined on the issue of legal invoices:

Hence, if the diary entries on the billing statements contain or reveal communications between an attorney and the client that are within the privilege, those entries may be withheld under IC 5-14-3-4(a)(1). In addition, any diary entries that reveal work product of an attorney may be withheld in the public agency’s discretion. IC 5-14-3-4(b)(2).

I see no reason to deviate from this conclusion seeing as the narrative portion of the invoices contains communication intended to be between the attorney and the client. So long as the information pertaining to the actual expenditure of taxpayer funds is disclosed, the narrative portion of the invoices may be withheld at the Town’s discretion.

CONCLUSION

Based on the foregoing, it is the Opinion of the Public Access Counselor the Town of Zionsville has not violated the Access to Public Records Act.

Regards,

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

Luke H. Britt
Public Access Counselor

Cc: Mr. Mark Crandley, Esq.