



STATE OF INDIANA

MICHAEL R. PENCE, Governor

**PUBLIC ACCESS COUNSELOR
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March 30, 2016

Mr. Bill Bitner
106 East Jefferson Street
Kempton, Indiana 46049

*Re: Formal Complaint 16-FC-37; Alleged Violation of the Access to Public Records Act by
Town of Kempton Clerk-Treasurer*

Dear Mr. Bitner:

This advisory opinion is in response to your formal complaint alleging that Town of Kempton Clerk-Treasurer, Ms. Rebecca Sherrill ("Clerk-Treasurer") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 et. seq. Ms. Sherrill has responded to your complaint. Her response is enclosed 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 on February 18, 2016.

BACKGROUND

Your complaint dated February 15, 2016 alleges the Town of Kempton Clerk-Treasurer violated the Access to Public Records Act by failing to provide you with the documents you requested.

On February 4, 2016 you requested a copy of minutes from a November meeting and were denied. You received a copy of the minutes later that day. You contend you were ordered out of the office shortly after. Sometime later, you asked for vouchers from November and allege the Clerk-Treasurer failed to promptly give you the documents, though you did receive the documents requested.

On February 22, 2016 the Clerk-Treasurer responded. The Clerk Treasurer states you requested minutes from the "last meeting" which she interpreted to mean you wanted January minutes. Official minutes had not been approved at that point and draft minutes had not been transcribed yet. The Clerk admits to ordering you from the office; however, she contends this was done because you had become upset with her inability to immediately provide you with the documents you requested.

ANALYSIS

The public policy of the 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.” See Ind. Code § 5-14-3-1. The Town of Kempton Clerk-Treasurer is a public agency for the purposes of the APRA. See Ind. Code § 5-14-3-2(n)(1). Accordingly, any person has the right to inspect and copy the Clerk-Treasurer’s disclosable 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).

You have conceded you obtained the records requested. The crux of your complaint appears to be that the Clerk-Treasurer did not immediately produce the documents requested and you were told to leave her office. With regard to the first issue, there appears to have been confusion about which documents you were actually requesting. You wanted November minutes while the Clerk-Treasurer believed you were asking for January minutes. Similar confusion appears to have been the cause of delay in providing you with November vouchers. Despite this confusion, you were provided the records you sought in short order. In the future, I would advise you to deliberately and particularly word your records requests in order that no confusion arises.

Your remaining complaint is the Clerk-Treasurer ordered you out of her office. However, the Clerk-Treasurer’s actions appear to have been in response to the escalation of your negative demeanor. Please be advised that public access is not immediate access in all cases and is not a means to harass public officials. It should be noted, a public agency has a reasonable time to produce records. The reasonable standard is not often on-the-spot access in response to a demand.

CONCLUSION

Based on the forgoing, it is the opinion of the Public Access Counselor the Town of Kempton Clerk-Treasurer has not violated the Access to Public Records Act.

Regards,

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

Luke H. Britt
Public Access Counselor

Cc: Ms. Rebecca Sherrill