



STATE OF INDIANA

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April 7, 2016

Ms. Jeanette Hensley
Post Office Box 451
Milton, Indiana 47357

*Re: Formal Complaint 16-FC-42; Alleged Violation of the Access to Public Records Act by
Town of Milton Clerk's Office*

Dear Ms. Hensley:

This advisory opinion is in response to your formal complaint alleging the Town of Milton Clerk's Office ("Office"), Mr. Terry Craig violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 et. seq. The Office has responded via Mr. Craig. His 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 March 1, 2016.

BACKGROUND

Your complaint dated February 29, 2016 alleges the Town of Milton Clerk's Office violated the APRA by improperly denied your records request.

On February 12, 2016 you emailed Mr. Craig, requesting a copy of the proposed budget for the Milton Municipal Building. As of the filing of your complaint, you had not received a response.

On March 3, 2016 the Office responded. The Office states your request was not in the proper form required. All requests must be on the Town's request form. Because your request was not in such a form, the Clerk contends it is improper. The Office contends an email was sent to you informing you of the proper procedure; however, a copy of the email was not included in the Clerk's response.

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 Milton Clerk's Office 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 Office'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).

The Office has stated it is Town policy all records requests be submitted on official forms. If there is an established procedure as to the form and function of a public records request made by an individual to an agency, it should be followed. See Ind. Code § 5-14-3-3(a)(2) and *Opinion of the Public Access Counselor 14-FC-51*. Therefore, the Office's denial of your email request is proper if the Office informed you of the requirement. The Office asserts it informed you of such, but did not include the alleged communication. This office is not a finder of fact and cannot determine whether the communication actually occurred. If the Clerk's Office informed you of the procedure, it has not violated the APRA.

Additionally, Mr. Craig questions whether the referenced document is a public record subject to release. He contends the document was generated by him in an individual capacity and has not been formally reviewed or approved by the Town Council. Mr. Craig's work product, if developed in his official capacity as Clerk, would be a public record under Ind. Code § 5-14-3-2(o) as he is generating a document as an agent of the Town. It matters not if done individually, if the documentation created is done so by an agent of the public entity and involves public business germane to his duties, it becomes a public record potentially available for public inspection.

Regards,

A handwritten signature in black ink, appearing to read 'LH Britt', with a long horizontal flourish extending to the left.

Luke H. Britt
Public Access Counselor

Cc: Mr. Terry Craig