



STATE OF INDIANA

MICHAEL R. PENCE, Governor

**PUBLIC ACCESS COUNSELOR
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April 7, 2016

Ms. Joyce Somuk
109 West Main Street
Worthington, Indiana 47471

Re: Formal Complaint 16-FC-43; Alleged Violation of the Access to Public Records Act by the Town of Worthington

Dear Ms. Somuk:

This advisory opinion is in response to your formal complaint alleging the Town of Worthington; Mr. Randy Raney, Town Marshal and Mr. Malcolm Stahl, President of the Worthington Town Council, (collectively known as "Town"), violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 et. seq. The Town has responded via counsel, Mr. Ryan McDonald, Esq. 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 27, 2016 alleges the Town of Worthington violated the APRA by improperly denying your records request.

On October 27, 2015, you requested a list of 11 sets of public records from the Worthington Town Council. In lieu of a response, the Council invited you to attend the November 10, 2015 Town Council meeting to discuss your request. You attended the meeting, but your records request was apparently not fulfilled.

On February 3, 2016, you requested similar documents, including a copy of the Town Charter, rules governing the Town Council, personnel information of Town employees and financial records. You contend that neither Mr. Raney nor Mr. Stahl responded to your request.

On March 16, 2016 the Town responded. The Town states it does not have a copy of the Town Charter. Records relating to the responsibilities of Town Council are in the Town Employee handbook. The Town has stated it does not possess a list of all town employees and their salaries. Finally, the Town has previously directed you to the Indiana Gateway for the financial records 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 Worthington 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 Town’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).

A request for records may be oral or written. See Ind. Code § 5-14-3-3(a); § 5-14-3-9(c). If the request is delivered by mail or facsimile and the agency does not respond to the request within seven (7) days of receipt, the request is deemed denied. See Ind. Code § 5-14-3-9(b). A response from the public agency could be an acknowledgement the request has been received and information regarding how or when the agency intends to comply.

The November response to your October request did not meet the standard set forth in the APRA. Furthermore, a public agency is not permitted to require you to state the purpose of your request, which seems to be the reason why you were invited to the Council meeting in October. Nonetheless, any complaint as to these matters are untimely pursuant to Ind. Code § 5-14-5-7, which states that a complaint must be received by this Office within thirty (30) days of the denial of a public records request.

As for your resurrected February request, the Town failed to acknowledge it and is therefore in violation of the APRA. The response to your complaint by the Town lists the denials and/or methods of access pursuant to your request. While this may or may not satisfy your request, it does not meet the seven-day written acknowledgement requirement set forth in Ind. Code § 5-14-3-9. Any exception you take with the response may be grounds for a new complaint and will not be addressed here.

Please do not hesitate to contact me with any further questions.

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. Ryan McDonald, Esq.