
OPINION OF THE PUBLIC ACCESS COUNSELOR

DANIEL R. BARTON,
Complainant,

v.

THE TOWN OF NEW HARMONY,
Respondent.

Formal Complaint No.
17-FC-197

Luke H. Britt
Public Access Counselor

BRITT, opinion of the Counselor:

This advisory opinion is in response to a formal complaint alleging the Town of New Harmony (“Town”) violated the Access to Public Records Act¹ (“APRA”). The Town has responded via its attorney Erin E. Bauer. 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 August 16, 2017.

¹ Ind. Code §§ 5-14-3-1 to -10

BACKGROUND

Daniel R. Barton (“Complainant”) filed a formal complaint alleging the Town violated the Access to Public Records Act by failing to produce records responsive to his request.

On August 7, 2017, Barton hand delivered a public records request to Karla Atkins, the Town Clerk-Treasurer. The Complainant requested the following records:

- “The most recent Outline referred to in comments made by Chairman David Flanders of the New Harmony Planning Commission on Thursday, August 3, 2017, describing planned changes to Chapter 17 of the Town of New Harmony Ordinances.”
- “[Copies] of each support letter that Chairman Flanders referred to in his presentation at the August 3, 2017 meeting.”

Atkins responded to Barton on August 10, to notify him that his request appeared to be identical to a request he submitted on August 6, to David Flanders, the Chairman of the Plan & Historic Preservation Commission. Atkins instructed Barton to wait for a response from Flanders.

Barton sent two responses to Ms. Atkins’ email. In the first, the he notes that he received a letter from Mr. Flanders that said Mr. Flanders had seven (7) days to respond to the request, and that if New Harmony did not respond to the request within seven (7) days, the request would be deemed denied. The Complainant threatened to file a complaint with my Office if he did not receive the requested records by the end of the business day on August 10.

Twelve minutes later, Barton sent the second email to Atkins stating that Chairman Flanders had not forwarded the requested records and asserting that Ms. Atkins had the power to give him the requested records. He again requested production of the requested records by the end of the business day on August 10. The Complainant, however, did not type Atkins' email address correctly, and she never received these emails.

Barton filed a formal complaint with this Office on August 10, 2017, which my Office received on August 16, 2017. My Office sent notice of the Complaint to the Town on August 17, 2017. The Town's Attorney provided a response to the notice of the Complaint on August 29, 2017.

In the response, the Town provided that Barton's first request to Mr. Flanders was a "written request" that was "sent" to Mr. Flanders, which appears to contradict Complainant's claim that he hand delivered the request to the Town. At any rate, the Town asserted that it has provided the requested support letters to the Complainant, and that the Outline requested by the Complainant does not exist.

The Town noted that it has a reasonable time under the APRA to fulfill the request, and that Barton frequently confuses the requirement for an acknowledgement within twenty-four (24) hours to be a requirement for production of records. As a result, the Town contends that Barton frequently threatens to file complaints with this Office if he requests records and they are not produced immediately. The Town further noted that the Complainant cannot expect a response to an email that he sent to an incorrect email address.

ANALYSIS

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.” Ind. Code § 5-14-3-1. The Town of New Harmony is a public agency for the purposes of the APRA. Ind. Code § 5-14-3-2(n). Therefore, 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. Ind. Code § 5-14-3-3(a).

A public agency is required to make a response to a written request that has been mailed within seven (7) days after it is received. Ind. Code § 5-14-3-9(c). If a request is hand delivered, an agency is required to respond within twenty-four (24) hours. Ind. Code § 5-14-3-9(b). If a records request is not denied, an agency must produce requested records within a *reasonable time*. Ind. Code § 5-14-3-3(b).

In this case, the Complainant appears to misunderstand the requirement for an agency response within twenty-four (24) hours. At a minimum, public agencies are required to provide an *acknowledgement* of a hand delivered records request within twenty-four (24) hours. The APRA does **not** require records to be produced within twenty-four hours of receiving a records request. Typically, this response is achieved when the requestor hands a records request to an employee of the agency. The response can be a verbal response, so long as the response is not a denial. *See* Ind. Code § 5-14-3-9(2) (providing that written, as opposed to verbal, requests must

be denied in writing and include a statement of specific exemption(s) authorizing the denial and the name and title of the person responsible for the denial). My strong recommendation to the Complainant is to stop demanding that the Town produce requested records within twenty-four (24) hours. The APRA does not require the Town to do so.

There also appears to be some confusion by the Town as well. Even if a request is written, if it is hand-delivered, the Town *must* respond within twenty-four (24) hours.

Mr. Flanders mailed a response the day after receiving the Complainant's request, and therefore did not violate the APRA as alleged by the Complainant. Mr. Flanders noted in this response that if the Town did not respond within seven (7) days, the request would be deemed denied. However, the Town did respond to the request when Mr. Flanders sent a response to the Complainant. The statute to which Mr. Flanders referred—Indiana Code Section 5-14-3-3(b)—provides that no response at all within seven (7) days deems a mailed or faxed written request denied.

Because formal complaints must be filed with my Office within thirty (30) days of a denial, the purpose of section 5-14-3-3(b) is to start the clock on the deadline to file a complaint with my Office when a requestor has received no response to a records request. I want to emphasize to the Town that to deny a written request, the Town must deny it in writing, cite the statutory exemption for withholding the requested record (or in this case, tell the requestor that the requested records does not exist), and provide the name and title of the person responsible for denying the request. The Town would violate APRA if it chose to deny a mailed

or faxed request by sitting on it for more than seven (7) days and not responding.

In its response, the Town indicated that it provided Mr. Barton with the support letters he requested, and told him that the requested outline did not exist. While I do not know when the Town provided the records responsive to the request, I can only assume it was done within a reasonable amount of time. Because the Complainant presumably received an in-person response from Ms. Atkins within twenty-four (24) hours, and because the Complainant received a response from Mr. Flanders within twenty-four (24) hours, and records responsive to his request have apparently been provided to him at this point, there appears to be no violations of the APRA.

CONCLUSION

Based on the foregoing, it is the Opinion of the Public Access Counselor that the Town of New Harmony did not violate the Access to Public Records Act.

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

Luke H. Britt
Public Access Counselor