
OPINION OF THE PUBLIC ACCESS COUNSELOR

THOMAS E. MASON,
Complainant,

v.

TOWN OF SHIPSHEWANA,
Respondent.

Formal Complaint No.
17-FC-199

Luke H. Britt
Public Access Counselor

BRITT, opinion of the Counselor:

This advisory opinion is in response to the formal complaint alleging the Town of Shippshewana (“Town”) violated the Access to Public Records Act¹ (“APRA”). The Town filed a response on September 14, 2017. In accordance with Indiana Code Section 5-14-5-10, I issue the following opinion to the formal complaint received by the Office of the Public Access Counselor on August 21, 2017.

¹ Ind. Code §§ 5-14-3-1 to -10

BACKGROUND

On July 11, 2017, Thomas E. Mason (“Complainant”) filed a public records request with the Shipshewana Clerk Treasurer seeking the following:

All billings by the law firm of Beers, Mallers, Barks & Salin for the years 2014, 2015, 2016, and January thru June 2017.

The same day, attorney Kurt R. Bachman responded to Mason on behalf of the Town. The Town’s response advised Mason that non-disclosable material may be redacted from the records he requested based on attorney-client privilege. The Town informed Mason that APRA permitted it to charge him a copying fee regardless of whether he requested actual copies of the records because the Town would need to make copies of the originals to make the necessary redactions before disclosure.

On August 1, 2017, the Town advised Mason of \$62.00 charge for copying the records. Mason takes issue with the fee.

The Town argues that its public records request form gave notice to any requestor that a charge may apply. Furthermore, the Town relies on a previous Public Access Counselor decision to justify fees for copies of public records which must be redacted—the request for inspection of redactable material does not shift the burden of accruing cost back to the agency.

ANALYSIS

The Access to Public Records Act (“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 Shipshewana is a public agency for the purposes of the APRA. *See* Ind. Code § 5-14-3-2(n).

The issue of legal invoices as public records is familiar to this Office. Requesters are often frustrated when invoices are released to them with what they perceive as overredaction.

Indeed it is a curious thing why law firms will put such sensitive information in writing on an invoice knowing full well they are disclosable public records. Other vendors do not put trade secrets in their receipts. Taxpayers like to know what they get when their resources are used to pay for services. And make no mistake, the money used to pay for legal services come from the pockets of taxpayers – a concept municipal lawyers and their clients sometimes tend to misperceive.

The mental impressions of attorneys in the scope of representation are sacrosanct, but memorializing them on invoices—as opposed to a client memo or brief—has always been a bemusing curiosity to this office. The fact or even scope of representation is not inherently privileged, only opinions, speculations, ideas and work product. *Hicks v. State*, 544 N.E.2d 500 (Ind. 1989). Surely municipal attorneys can communicate a demand for payment without including a profound treatise of legal theory and strategy.

Nevertheless, the redaction of attorney-client communication is permissible. And despite the puzzling inefficiency of including them on billing statements, the practice is a known quantity. It has been addressed enough times by this office and the courts, that requesters should expect some redaction when seeking them. The redaction process naturally necessitates printing copies. Therefore, a copy fee may be charged back. It is my sincere hope that the inclusion of sensitive information on a bill is not a deterrent to request the document in the first place.

In any case, the Complainant requested three years' worth of invoices. This would not normally be a reasonable particular request and public records must be sought with a standard of specificity. For example, if invoices were identified as being associated with a particular lawsuit or project, it would be specific.

Therefore, I am not surprised the search yielded 620 documents over the three-plus-year span. To an extent, a requester of such a large swath of information should expect to reimburse the public agency for the actual costs associated with the request. Just like an attorney invoice should be tight and concise, so too should be a request seeking those invoices.

A handwritten signature in black ink, appearing to read 'LH Britt', with a stylized flourish at the end.

Luke H. Britt
Public Access Counselor

