
OPINION OF THE PUBLIC ACCESS COUNSELOR

TYLER J. MENDENHALL,
Complainant,

v.

CITY OF FISHERS,
Respondent.

Formal Complaint No.
17-FC-271

Luke H. Britt
Public Access Counselor

BRITT, opinion of the Counselor:

This advisory opinion is in response to a formal complaint alleging the City of Fishers (“City”) violated the Access to Public Records Act¹ (“APRA”). The City responded to the complaint through City Attorney Christopher Griesl. 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 November 29, 2017.

¹ Ind. Code §§ 5-14-3-1 to -10.

BACKGROUND

Tyler Mendenhall (“Complainant”) contends the City violated the APRA by failing to provide access to public records within a reasonable time.

On September 7, 2017, Mendenhall requested the following records from the City:

All emails sent *and* received between Mayor Scott Fadness and the following people between 2/1/2017 and 9/01/2017:

- Eric Pethtel;
- Scott Baldwin;
- Jason Hardister; and
- Mark Heirbrandt

Containing the following words/phrases/subject matter:

- Hoosier Heritage Port Authority (HHPA)
- Nickel Plate Trail (NPT)
- Trail
- Railroad
- Train
- Tracks
- Indiana Transportation Museum (ITM)
- Railbank

The City acknowledged Mendenhall’s request the same day, stating it anticipated having the records—or at least a progress update—within 30 days.

On October 17, 2017, Mendenhall sent an email to the City to follow up on his request. The same day, the City replied by stating its information technology department recently

completed the search queries related to his request and should be in a position within the next two weeks to release any responsive records.

Mendenhall followed up again on November 9, 2017. After receiving no response, he again requested an update on his request on November 14, 2017. Six days later, the City Clerk replied and informed Mendenhall that his message had been forwarded to City Attorney Chris Greisl.

Mendenhall filed a formal complaint against the City with this Office on November 29, 2017.

On December 15, 2017, while this complaint was pending but before the City's answer was due, the City finalized its records search and provided Mendenhall with records it deemed responsive to his request.

It is worth mentioning that whenever the public records request that forms the basis of a formal complaint is fulfilled while the complaint is pending, this Office contacts the complainant to ask if they wish to proceed or withdraw the complaint. Essentially, if the Complainant is satisfied the complaint is moot.

On December 20, 2017, this Office contacted Mendenhall asking how he wished to proceed. Mendenhall did not withdraw the complaint because he believes the records the City provided do not satisfy his request.

The City disputes that an APRA violation has occurred in this case. Specifically, the City contends that it provided Mendenhall with records responsive to his request within a reasonable time.

On January 3, 2018, the City supplemented its response with additional documentation originally and unintentionally omitted. The City cites prior opinion of this office, *Opinion of the Public Access Counselor*, 17-FC-182, (2017), in its response here. That opinion is hereby incorporated by reference. In total, the City has provided 332 pages of documentation to Mendenhall.

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 City of Fishers is a public agency for the purposes of the APRA. *See* Ind. Code § 5-14-3-2(n). Therefore, any person has the right to inspect and copy the City’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 public agency is required to make a response to a written request that has been mailed within seven days after it is received. *See* Ind. Code § 5-14-3-9(c).

Although the City supplemented its initial response on January 3, 2018, Mendenhall reaffirmed his dissatisfaction with the ultimate production of records on January 8. Mendenhall, however, did not specify how he considered the records to be non-responsive. Some records were withheld as deliberative material, however, this Office is not a finder-of-fact and a privilege log is not required to fulfill a request. Given that the end result was over three-hundred pages long, there

is a strong presumption that the City has produced everything pursuant to the request.

For those reasons, buttressed by the analysis in 17-FC-182, this Office considers this matter closed.

CONCLUSION

Based on the foregoing, it is the Opinion of the Public Access Counselor that the City of Fishers has not violated the Access to Public Records Act.

A handwritten signature in black ink, appearing to read 'LH Britt', is positioned above the printed name.

Luke H. Britt
Public Access Counselor