
OPINION OF THE PUBLIC ACCESS COUNSELOR

KURT J. DISSER,
Complainant,

v.

LINCOLN TOWNSHIP BOARD OF HENDRICKS CO.,
Respondent.

Formal Complaint No.
19-FC-124

Luke H. Britt
Public Access Counselor

BRITT, opinion of the Counselor:

This advisory opinion is in response to a formal complaint alleging the Lincoln Township Board of Hendricks County violated the Access to Public Records Act.¹ Board Chairman Emory T. Lencke, filed a response to the complaint. 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 November 6, 2019.

¹ Ind. Code § 5-14-3-1 to 10.

BACKGROUND

Kurt J. Disser (“Complainant”) contends that during a Township Board meeting on October 21, 2019, he personally submitted a public records request to the board chairman seeking inspection of minutes and notice of several identified meetings.

Later in the meeting, Disser requested the chairman’s email address to resubmit the request. He contends he is entitled to the contact information and an acknowledgement pursuant to statute. Disser also contends he has not received the requested material nor is there any official electronic contact information to submit public records requests to the Township.

Chairman Lencke responded by arguing the Township secretary offers the prior meeting minutes prior to the commencement of the current meeting, which Disser did not take. Prior meeting minutes were not provided because final action was not taken and the chairman presumably believes no minutes were required although that remains unclear.

What also remains unclear is the attribution of a statement to Disser that his public records request need not be answered.

Finally, the chairman contends his email address and contact information are readily available from other sources save for the county website.

ANALYSIS

1. The Access to Public Records Act (“APRA”)

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 Lincoln Township Board of Trustees of Hendricks County is a public agency for the purposes of the APRA; and thus, is subject to the Act’s requirements. Ind. Code § 5-14-3-2(n).

As a result, any person has the right to inspect and copy the Board’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).

Under APRA, if a person hand-delivers a public records request, a denial of disclosure does not occur until twenty-four hours have elapsed from the date the public agency receives the request. Ind. Code § 5-14-3-9(b).

This provision exists to prevent an agency from simply ignoring a request for records. An agency’s failure to respond for 24 hours triggers a denial and, the denial triggers the requirement for a statutory explanation by the agency.

Therefore it is not so much an issue that Chairman Lencke did not immediately acknowledge the request. Complicating this issue is Lencke’s assertion that Disser advised him not

to answer his letter. Again, it is unclear if the “letter” referenced by Lencke is the same as the public records request. If it is, that would be a bizarre and contradictory statement by Dissler if he expects the request to be fulfilled.

There is no way of verifying the accuracy of Lencke’s assertion but it does not make sense in context.

As for the subject matter of the requests themselves, it appears as if the minutes sought were from meetings that this office had already declared non-compliant. *See Opinion of the Public Access Counselor, 19-FC-48 (2019)*. These do not appear to exist and that, of course, is problematic, but I see no value in continuing to litigate that issue through this office. I believe the Board knows that minutes or memoranda will be required at all meetings going forward from that opinion.

Finally, there is no legal requirement that an individual board member provide an email address specifically to field public records requests, but a Board Chairman is required to have records of the Township’s proceedings in its custody. However, it stands to reason that any Board Chairman should have conspicuous contact information, available upon request, to receive records requests from the public.

CONCLUSION

Based on the foregoing, it is the opinion of the Public Access Counselor that the Lincoln Township Board of Hendricks County develop a consistent process to acknowledge and process public records requests.

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

Luke H. Britt
Public Access Counselor