
OPINION OF THE PUBLIC ACCESS COUNSELOR

GEORGE MOFFETT,
Complainant,

v.

ST. JOSEPH COUNTY DIV. OF PUB. WORKS,
Respondent.

Formal Complaint No.
19-FC-69

Luke H. Britt
Public Access Counselor

BRITT, opinion of the Counselor:

This advisory opinion is in response to a formal complaint alleging the St. Joseph County Division of Public Works violated the Access to Public Records Act.¹ St. Joseph County responded via Legal Counsel Jamie Woods. 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, 2019.

¹ Ind. Code § 5-14-3-1 to 10.

BACKGROUND

Around July 10, 2019, George Moffett (“Complainant”) sent a request for records to the St. Joseph County Highway Department. Moffett requested the following:

Any or all documents relating to the culvert and or easement in the 23100 block of Stanton road, specifically the control structure located on the north side of Stanton road at the entrance to said culvert.

Over the course of the next month Moffett contacted members of the St. Joseph County Division of Public Works office about his request. Moffett contends that his attempts to follow up with the county were unsuccessful.

As a result, Moffett filed a formal complaint on August 16, 2019 alleging the St. Joseph County Division of Public Works denied him access to public records. Essentially, Moffett contends that he did not receive the records he requested from the county even after making multiple calls to public works office to follow up on his request.

The St. Joseph County Division of Public Works disputes Moffett’s claim of a public access violation. The county acknowledges that it received Moffett’s request on or around July 10, 2019. The county contends that multiple people have searched the records of the Division of Public Works for the records requested by Moffett, but no responsive records were found. The county contends that the lack of responsive records is unsurprising because the culvert described by Moffett in the request is a private culvert rather than one maintained by the Division of Public Works. What is more, the county asserts that it informed Moffett that no

responsive records exist during several phone calls prior to this complaint.

ANALYSIS

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

It is the public policy of the State of Indiana that all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees. Ind. Code § 5-14-3-1.5-1.

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.” *Id.* The St. Joseph County Division of Public Works is a public agency for the purposes of APRA; and thus, subject to the act’s requirements. Ind. Code § 5-14-3-2(n). Unless otherwise provided by statute, any person may inspect and copy the ISP’s public records during regular business hours. Ind. Code § 5-14-3-3(a).

Here, Moffett requested records related to a culvert and easement in the 23100 block of Stanton road, specifically the control structure on the north side of the road. The parties agree that Moffett made repeated attempts to contact the Division of Public Works in the weeks after the request. The county asserts that it searched for, and found no records responsive to his request because the culvert described by Moffett is private and not maintained by the county. The county also contends that it informed Moffett several times

that it had no records responsive to his request before he filed his complaint.

Presumptively, Moffett believes the county has records responsive to his request but has not disclosed them. At the same time, Moffett has not provided this office with any information or evidence disputing the county's assertion that it has no responsive records.

APRA governs access to public records as defined under the law. *See* Ind. Code § 5-14-3-2(r). If a public agency has nothing responsive to a request for records, then the agency has no duty to provide the records requested. Still, if the agency has nothing responsive it should say so, which St. Joseph County asserts it did during several phone calls with Moffett.

As an aside, the county should be mindful that APRA requires the denial of a written request for records to also be in writing and include: (1) a statement of the specific exemption or exemptions authorizing the withholding of all or part of the public record; and (2) the name and the title or position of the person responsible for the denial. Ind. Code § 5-14-3-9(d).

Here, it appears the county informed Moffett orally that it did not have records responsive to his request. Going forward, the best practice would be to put the denials of disclosure in writing with the information mentioned above included.

CONCLUSION

Based on the foregoing, it is the opinion of this office that the St. Joseph County Division of Public Works 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