
OPINION OF THE PUBLIC ACCESS COUNSELOR

DANIEL V. KELLEY,
Complainant,

v.

TOWN OF HEBRON,
Respondent.

Formal Complaint No.
20-FC-59

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 Hebron violated the Access to Public Records Act.¹ Attorney Theodore A. Fitzgerald filed an answer to the formal complaint with this office. 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 April 17, 2020.

¹ Ind. Code § 5-14-3-1-10.

BACKGROUND

This case involves a dispute over access to data collected by the Town of Hebron's public works staff.

On March 23, 2020, Daniel Kelley (Complainant) filed a public records request with Hebron seeking the following:

Total Coliform Groundwater Rule Reports (completed state forms 53297) for tests performed between and including 20 Nov 19 and 30 Nov 19.

Records of IDEM reviewed sample siting plan(s) that include(s) schedule and sample sites for routine monitoring for the coliform tests performed in 2018 and 2019. (The number of approval records is not known since there may be more than one approval during the date range.)

Records of IDEM authorization allowing deviations from any of the accepted sampling plans and schedules.

Calibration records for the Inspection, Measurement, and Test Equipment used to determine or establish the values reported on the Monthly Report of Operations (State Form 34609) during the period(s) of 2018 and 2019 for

- a. Water Treated (reported on page two, column two)
- b. Chemicals Used – Pounds, Chlorine (reported on page two, column eight.)

On April 6, 2020, the Town denied Kelley's request and re-directed him to Indiana Department of Environmental Management (IDEM) as they are available at that agency.

Dissatisfied with the response, Kelley filed his complaint on April 17, 2020, alleging the Town’s response violated the Access to Public Records Act.

For its part, the Town responded on May 4 first citing the strain on resources this type of request would entail, especially at the height of the COVID-19 pandemic. The Town also accuses Kelley of being a disgruntled former employee who is using his public records request to harass the Town. As evidence, the Town attached several past records requests and emails from the Complainant.

ANALYSIS

1. The Access to Public Records Act

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 Hebron (Town) is a public agency for purposes of APRA; and therefore, subject to its requirements. *See* Ind. Code § 5-14-3-2(q). As a result, unless an exception applies, any person has the right to inspect and copy the Town’s public records during regular business hours. Ind. Code § 5-14-3-3(a).

Indeed, APRA contains exceptions—both mandatory and discretionary—to the general rule of disclosure. In particular, APRA prohibits a public agency from disclosing certain records unless access is specifically required by state or federal statute or is ordered by a court under the rules of discovery. *See* Ind. Code § 5-14-3-4(a). In addition, APRA lists

other types of public records that may be excepted from disclosure at the discretion of the public agency. *See* Ind. Code § 5-14-3-4(b).

2. Kelley's request

On its face, Kelley's request does not look unreasonable or over-burdensome. The request and questions are highly technical, to be sure, but presumably is commensurate with the expertise and knowledge of board of works employees.

The Town's denial is predicated on the records being available Indiana Department of Environmental Management (IDEM). Toward that end, when Kelley contacted our office in April, I made the same recommendation. He explained that he had not had much prior success in getting the records he seeks from IDEM.

The records originated with the Town and there is no indication it does not have copies of the documents in its custody. IDEM may or may not be the most convenient way to obtain them, but ultimately, the duty to provide information is the responsibility of the public agency upon which a public records request is served.²

The Town alleges it would be difficult to honor Kelley's request during the pandemic. Indeed, it may delay the reasonable time an agency has to respond, but the pandemic is not an excuse to abdicate the duty to provide public records. The Town seems to allude that the Governor Holcomb's executive orders gives agencies the ability to put off responding to requests until the expiration of the public health emergency, but that is simply not the case. The executive orders

² Ind. Code § 5-14-3-1.

suspend the deadlines for acknowledging requests (e.g., receipts of submissions), but the reasonable timeliness requirement is still in effect. Therefore production may be delayed to an extent, but public access remains an essential duty.

As for the issue of Kelley trying to harass Town employees, it is difficult to speak to Kelley's previous relationship with the Town or scrutinize prior requests without more context. Based on the information provided, however, the communication hardly seems harassing as the Town asserts.

RECOMMENDATIONS

Based on the foregoing, it is the opinion of this office that the Town of Hebron should work to fulfill Mr. Kelley's request within a reasonable time. Any information that can be withheld by law regarding certain specifications of municipal utilities (e.g. Ind. Code §§ 5-14-3-4(b)(11) or (19)(k)) may, of course, be redacted to the appropriate degree.



Luke H. Britt
Public Access Counselor