



STATE OF INDIANA

ERIC J. HOLCOMB, Governor

PUBLIC ACCESS COUNSELOR
LUKE H. BRITT

Indiana Government Center South
402 West Washington Street, Room W470
Indianapolis, Indiana 46204-2745
Telephone: (317)234-0906
Fax: (317)233-3091
1-800-228-6013
www.IN.gov/pac

August 10, 2020

Mr. Gary Robinson
595 Sugar St.
Marengo, IN 47140

Re: Informal opinion 20-INF-5; Records requests to County Auditor

This opinion is in response to your inquiry regarding records of the Crawford County Redevelopment Commission and requests for which you submitted to the Crawford County Auditor.

BACKGROUND

At some point before June 15, 2020, you submitted a public records request to the Crawford County Auditor (Auditor) for records related to the Crawford County Economic Development Commission (EDC).

While the EDC is not a public agency, by your understanding certain records must be transmitted from the EDC to the county per contract. You have included several provisions of that contract with your inquiry. Namely, the contract purportedly requires submission of semi-annual reports and an annual summary of those reports.¹

The contract goes on to provide that any notices required to be submitted to the county is sent to the care of the Auditor. You were also told to submit public access requests to the Auditor for county information.

The county, through its attorney, denied your request on June 15, 2020. The county attorney asserted that the county does not need to create records to fulfill a request, and that the Auditor does not have the other records you seek. You seek a determination as to whether they should exist in the custody of the Auditor and if Redevelopment Commission minutes are disclosable.

¹ It is difficult to assess when and how this contract is effective as the entirety of the contract was not provided, only certain portions. Additionally, the original request was not submitted. While there is enough provided to make a statement, it will be broader than perhaps is expected. For the purposes of this Informal Opinion, the statements made in the inquiry will be presumed to be accurate.

ANALYSIS

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

It is the 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 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.* Crawford County 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 County’s public records during regular business hours. Ind. Code § 5-14-3-3(a).

1.1 Auditor’s and attorney’s custody of the records

The portions of the agreement provided indicate the Crawford County Economic Development Corporation (EDC) must submit to the Crawford County Commissioners and the Crawford County Council notices required by the agreement to the care of the county auditor and the county attorney. Presumably, this would include the required reports and summaries in your request.

The clauses are relatively unambiguous and would certainly lead the reader to reasonably assume that the Auditor would be a custodian of the record. And if not the auditor, then the county attorney, who is named in the agreement as a recipient of those materials as well.

Based on the information provided, the county attorney (also the attorney named in the agreement) denied a portion of your request by stating the Auditor was not in receipt of the records you seek. It does not appear any further effort was made to procure the records on your behalf even though you identified the portions of the agreement which state those parties are responsible for the receipt of the records.

While a county auditor or county attorney is not the de facto record-keeper for a county, your incredulity is seemingly justified. The county attorney could have at least sought the records from the commissioners or the council who surely would have those records. You also claim you were told orally to submit the request to the Auditor. Based on what your present in your inquiry, it does look like a shell game.

1.2 Minutes of the RDC

You additionally sought minutes from a 2016 County Redevelopment Commission (RDC) meeting, which were referenced in a February 13, 2017, RDC meeting.

Pursuant to the County-Local General Retention schedule, official minutes of any public governing body are considered critical and permanent.² They must be kept in perpetuity.

Based on the 2017 minutes, it appears as if the minutes of a July 26, 2016, RDC meeting were lost. You sought these from the Auditor as well. The county attorney responded the county did not have them.

Part of the confusion is that the request appears to seek Crawford County Economic Redevelopment Commission. There does not appear to be such an entity. It is fairly clear, at least to this office, that you were seeking RDC minutes and not that of an entity which does not exist. Technically, however, there is likely no government body with that exact name.

In any event, it is unclear whether the county attorney or auditor would have these records. RDCs often have their own attorney mutually exclusive from the county's lawyer. County auditors are not the clerk of county RDCs by statute either in the same way they are the clerk of the county executive and fiscal body.³

Therefore in the case of the minutes, I would suggest you seek them from the RDC directly. If the county attorney handles their request, I would simply clarify that you are seeking minutes from the 2016 RDC meeting.

Please do not hesitate to contact me with any questions.

Best regards,



Luke H. Britt
Public Access Counselor

² County/Local General Retention Schedule, GEN 10-01

³ Ind. Code §§ 36-2-9-7, -8.