



STATE OF INDIANA

MICHAEL R. PENCE, Governor

PUBLIC ACCESS COUNSELOR
LUKE H. BRITT

Indiana Government Center South
402 West Washington Street, Room W470
Indianapolis, Indiana 46204-2745
Telephone: (317)233-9435
Fax: (317)233-3091
1-800-228-6013
www.IN.gov/pac

April 30, 2015

Ms. Susan M. Moore
2203 Leer St.
South Bend, IN 46613

Re: Formal Complaint 15-FC-113; Alleged Violation of the Access to Public Records Act by the City Clerk of South Bend

Dear Ms. Moore,

This advisory opinion is in response to your formal complaint alleging the City Clerk of South Bend ("Clerk") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et. seq.* The Clerk has responded via Mr. John Voorde, Clerk and Mr. Paul Singleton, Esq., South Bend City Attorney. Their responses are enclosed for your review. Pursuant to Ind. Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on March 30, 2015.

BACKGROUND

Your complaint dated March 16, 2015 alleges the South Bend City Clerk violated the Access to Public Records Act by failing to provide the records you requested.

On or about March 16, 2015, you were "denied access to Council minutes book" because you were "told that the Deputy Clerk had to give permission." You state the Deputy Clerk is "never available." Furthermore, on March 6, 2015, you requested "tickets", "lawsuits" and "disciplinary actions" against the Deputy Clerk. As of the date of the filing of your complaint, you had not received any information.

The Clerk responded by arguing you received all of the minutes requested on March 24, 2015 when you were in the office and copies were made for you. Moreover, portions of the documentation you requested were remitted to you on April 1, 2015. The disciplinary records you seek simply do not exist.



STATE OF INDIANA

MICHAEL R. PENCE, Governor

**PUBLIC ACCESS COUNSELOR
LUKE H. BRITT**

Indiana Government Center South
402 West Washington Street, Room W470
Indianapolis, Indiana 46204-2745
Telephone: (317)233-9435
Fax: (317)233-3091
1-800-228-6013
www.IN.gov/pac

ANALYSIS

The public policy of the 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.” See Ind. Code § 5-14-3-1. The City Clerk of South Bend is a public agency for the purposes of the APRA. See Ind. Code § 5-14-3-2(n)(1). Accordingly, any person has the right to inspect and copy the Clerk’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 request for records may be oral or written. See Ind. Code § 5-14-3-3(a); § 5-14-3-9(c). If the request is delivered in person and the agency does not respond within 24 hours, the request is deemed denied. See Ind. Code § 5-14-3-9(a). If the request is delivered by mail or facsimile and the agency does not respond to the request within seven (7) days of receipt, the request is deemed denied. See Ind. Code § 5-14-3-9(b). A response from the public agency could be an acknowledgement the request has been received and information regarding how or when the agency intends to comply.

As for the City Council minutes sought, it appears as if you were granted access to them within a week. A public agency is not required to grant immediate access; only those public records be made available to you within a reasonable time. See Ind. Code § 5-14-3-3.

Additionally, it appears as if the “tickets” and “lawsuit” portions of your request were satisfied shortly after the filing of your compliant. You received these documents within thirty (30) days which is reasonable based upon your request. Finally, please be advised a public agency has the discretion to withhold personnel files except for the factual basis of any discipline leading to suspension, demotion, or termination. See Ind. Code § 5-14-3-4(b)(8) It appears as if the individual city employee you sought disciplinary records for was not subject to suspension, demotion or termination and the factual basis does not exist. A public agency is not required to create a record in order to satisfy a public records request. The City has seemingly given you all of the records which are available to you.

CONCLUSION

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



STATE OF INDIANA

MICHAEL R. PENCE, Governor

**PUBLIC ACCESS COUNSELOR
LUKE H. BRITT**

Indiana Government Center South
402 West Washington Street, Room W470
Indianapolis, Indiana 46204-2745
Telephone: (317)233-9435
Fax: (317)233-3091
1-800-228-6013
www.IN.gov/pac

Regards,

A handwritten signature in black ink, appearing to read "L. H. Britt", written in a cursive style.

Luke H. Britt
Public Access Counselor

Cc: Mr. John Voorde; Mr. Paul Singleton, Esq.