



STATE OF INDIANA

MICHAEL R. PENCE, Governor

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July 23, 2015

Mr. Andrew Straw, Esq.
241A Brittany Drive
Streamwood, Illinois 60107

Re: Formal Complaint 15-FC-188; Alleged Violation of the Access to Public Records Act by the City of South Bend

Dear Mr. Straw,

This advisory opinion is in response to your formal complaint alleging the City of South Bend ("City") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et. seq.* The City has responded to your complaint via Mr. Paul Singleton, City Attorney. 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 June 15, 2015.

BACKGROUND

Your complaint dated June 15, 2015 alleges the City of South Bend violated the Access to Public Records Act by failing to provide the emails you requested.

On an unknown date, you sent a request for emails containing several terms between the Mayor, his staff and department heads between May 5, 2011 and August 27, 2012. The City asked you to narrow your request in light the amount of emails was too large for it to be practical for the City's staff to go through. Several of the emails also allegedly contain privileged information; however, you do not take exception to any potential redaction. Your main point of contention is that the City refused to produce any documents at all.

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 of South Bend is a public agency for the purposes of the APRA. See Ind. Code § 5-14-3-2(n)(1).



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You are absolutely correct you are entitled to public records. When drafting the Access to Public Records Act, the Indiana General Assembly wrote the government is the servant of the people and not their master and it is the right of the public to be *fully* informed in the affairs of their representative officials. Not partially - not just when it is convenient to the government - but *fully* informed.

The legislature recognized an important balance, however, between the absolute right to public information and the practicality of a public agency responding to a broad request. The right to public access – while unfettered – is limited to the parameters of a search query, hence the provision regarding reasonable particularity in Ind. Code § 5-14-3-3. The APRA is not a license to cast a wide net to capture information which may or may not exist. A public records search should not be a fishing expedition and the intent of the statute is mutually exclusive from a discovery device under the trial rules. On its face, your request does not meet the standard set forth by prior Public Access Counselors and the Indiana Court of Appeals in *Anderson v. Huntington County Bd. of Com'rs.*, 983 N.E.2d 613 (Ind. Ct. App. 2013): a reasonably particular request names a specific sender, recipient, and date frame. I would also contend a specific request would include one or more key words for a search parameter. You have partially satisfied these elements; your request would only need a bit of alteration when it comes to the named sender and recipient.

That being said, you should be able to make a request without having to guess what records exist and what records do not. In your complaint to this Office you state you are trying to get information about “handicap access and violations thereof”. It stands to reason that a place to start would be with the City’s housing authority and request emails between its director and the mayor of the City. Alternatively, South Bend has a Human Rights Commission, an ADA Transition Plan program and a named ADA Coordinator. All of these agencies and program directors would surely assist you in tailoring an appropriate request.

In your argument, you feel the City is exhibiting poor customer service by denying you the records, however, you have been asked to narrow your request. The invitation alone is evidence they are at least attempting to work with you before outright denying your request. I do not think you need to identify a record with pinpoint accuracy. And access to information is an essential part of government – even if it is inefficient and time-consuming – but it is not the role of the government to guess what you might be looking for amongst thousands of pages of documents. I know you have felt frustrated by the City’s responsiveness in the past (*see Opinion(s) of the Public Access Counselor 12-FC-69; 15-FC-139*), but I think they are equally frustrated by the breadth of your searches.



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As I indicated in *Opinion of the Public Access Counselor 15-FC-139*, both parties were partially to blame for a previous request falling through the cracks. When it comes to the present matter, however, it appears to me both parties would be well served by a reboot of this request with you tailoring your query to include relevant senders and recipients of communication.

Please do not hesitate to contact me with any questions or suggestions. My Office is here to assist and it is my expectation you receive the information you are seeking from the City in a timely manner.

Regards,

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

Luke H. Britt
Public Access Counselor

Cc: Ms. Cristal Briscoe, Esq.