



STATE OF INDIANA

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August 23, 2016

Joe and Karla Lawless
1796 North County Road 250 West
Greencastle, Indiana 46135

Re: Formal Complaint 16-FC-168 and 198; Alleged Violation of the Access to Public Records Act by the Putnam County Convention and Visitors Bureau (Consolidated) (Priority)

Dear Mr. and Mrs. Lawless:

This advisory opinion is in response to your formal complaint(s) alleging the Putnam County Convention and Visitors Bureau ("Bureau") violated the Access to Public Records Act ("APRA"), Indiana Code § 5-14-3-1 et. seq. The Bureau has responded via Mr. Rick Patel. His response(s) are enclosed for your review. Pursuant to Indiana Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on August 12, 2016. This complaint has been granted priority status.

BACKGROUND

Your complaints dated July 18 and August 11, 2016, allege the Putnam County Convention and Visitors Bureau violated the Access to Public Records Act by not providing records to you within a reasonable time. This complaint is the latest in an ongoing issue you and your husband have had with the Bureau.¹ You have been seeking a copy of your personnel records from the Bureau and have been unable to obtain them.

On July 20, 2016 the Bureau responded to your first complaint. The Bureau states it is still compiling the records requested, but also notes several of the records requested do not exist.

On August 17, 2016 the Bureau responded to your second complaint. The Bureau states it has made several attempts to find your personnel records, but was unable to do so. The Bureau contends you, as the previous Executive Director, were responsible for maintaining all records, including records from the timeframe you are requesting.

¹ See Advisory Opinions 15-FC-192, 15-FC-211, 15-FC-307, 16-FC-77 and 16-FC-127

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 Indiana Code § 5-14-3-1*. The Putnam County Convention and Visitors Bureau is a public agency for the purposes of the APRA. *See Indiana Code § 5-14-3-2(n)(1)*. Accordingly, any person has the right to inspect and copy the Bureau’s disclosable public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. *See Indiana Code § 5-14-3-3(a)*.

Requests of Joe Lawless for Meeting Information and ‘Conflict of Interest’ forms

Many of these matters have been addressed in prior opinions. The request itself does not appear to involve a large number of documents. However, your request made in March 2016 for nine (9) months’ worth of the Board’s packets and agendas is still partially pending. The documentation for the June through September 2015 meetings has not be produced.

The APRA does not specify a time for production or inspection of responsive records. Instead, it states a request for public records must be fulfilled by a public agency within a reasonable time. *See Indiana Code § 5-14-3-3(b)*. Reasonableness depends on the circumstances, including: size of the public agency, number of pending requests, complexity of the request, and any other operational consideration which may reasonably affect the public records process.

Board packets and agendas are generally some of the easiest public records to organize, maintain and produce. In most public agencies they are filed by date and a requestor should be able to obtain copies relatively quickly. I do know the Putnam County Convention and Visitors Bureau is a small agency and recently underwent reorganization. Despite those factors, it has simply taken too long to produce this documentation. The records should be retrieved and released immediately upon receipt of this opinion.

Based upon the May 2015 minutes of the Bureau, “Conflict of interest forms were distributed and board members disclosed their conflicts.” It was implied in the minutes this action was done by the Bureau attorney, Mr. Glenn Bowman. Mr. Lawless requested these documents months ago. On July 20, 2016, Mr. Patel emailed this Office and stated the packets do not exist. Clearly they existed at one time according to the May 2015 meeting minutes. A public agency shall protect public records from loss, alteration, mutilation, or destruction. *See Indiana Code § 5-14-3-7 (a)*. If they no longer exist, then it is a consequence of the Bureau not being an adequate steward of public records.

Requests of Karla Lawless for Personnel Records.

Personnel records are generally exempt from disclosure under the APRA except in cases where the employee is seeking the file for themselves. *See Indiana Code § 5-14-3-4(b)(8)*. You originally requested your evaluations and performance sheets on June 17, 2015. Mr. Patel asked for your assistance with retrieving those records although you had already been terminated.

While the Bureau does not raise the allegation outright, it implies you were responsible for the removal or destruction of the records in question. You deny this allegation. This office is not a finder of fact and

cannot determine why the records are unavailable. But, I find it highly unlikely you would go to the time and trouble to continually request documents you allegedly destroyed or absconded with as an office-holder.

Furthermore, Mr. Lawless has continually asked for a set of documents referred to as “case history and processes” on your behalf. Although the Bureau denies the existence of this type of document, it was specifically referenced by a Bureau board member in the September 2015 minutes. So they existed at one time, but disclosure has not taken place. Again, under the APRA, a public agency must disclose public records and protect those records from loss or destruction. I am not satisfied with the Bureau’s argument that Ms. Lawless was the root cause of the missing records – especially those created during and after her termination.

CONCLUSION

Based on the foregoing, it is the Opinion of the Public Access Counselor the Putnam County Convention and Visitor’s Bureau has violated the Access to Public Records Act.

Regards,

A handwritten signature in black ink, appearing to read 'L. H. Britt', with a long, sweeping underline.

Luke H. Britt
Public Access Counselor

Cc: Mr. Rick Patel