



STATE OF INDIANA

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OPINION OF THE PUBLIC ACCESS COUNSELOR

TAMMY B. DANNER)

Complainant,)

v.)

CITY OF FRANKFORT)

Respondent.)

17-FC-135

ADVISORY OPINION

July 31, 2017

This advisory opinion is in response to the formal complaint alleging the City of Frankfort (“City”) violated the Access to Public Records Act (“APRA”), Ind. Code §§ 5-14-3-1–10. 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 June 16, 2017.

BACKGROUND

In her formal Complaint, the Complainant alleges the City of Frankfort has improperly denied her request for certain records twice.

In May 2017, the Complainant submitted a records request to the City dated May 15, 2016. The City responded via the City Attorney in a letter dated May 16, 2017. The Attorney notified the Complainant of the cost of copying records responsive to her request for the Clerk-Treasurer’s departmental budgets for the years 2013-2017, and that bonds issued related to “Old Stoney¹” could be put on a compact disk for the Complainant. The Attorney stated that the City does not have a budget for the city golf course, and thus the City could not provide the records requested. Finally, the Complainant’s remaining three request

¹ The old Frankfort Stone High School, which now houses the Clinton County Historical Society & Museum and other city offices, according to <http://wikimapia.org/3847120/Old-Frankfort-Stone-High-School-Old-Stoney>



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for tax abatements for the last five years, bond issues for the last five years, and documents from the last five years pertaining to “any projects that are in the planning stages/or bonds being looked into” were all denied for lacking reasonable particularity pursuant to Indiana Code section 5-14-3-3(a)(1).

After receiving the denials described above, the Complainant contacted the Indiana Office of the Attorney General. A deputy attorney general explained to the Complainant that the statute describing reasonable particularity could not be used to deny a request, because a request that lacks reasonable particularity means the requestor did not provide enough information at the time of the request, and that it was the responsibility of the agency to ask the requestor for more information about the records requested. The Complainant sent correspondence to the City dated May 24, 2017, describing her communication with the Attorney General’s Office. In this correspondence, the Complainant provided an updated records for all active tax abatements issued by the City, all active bonds issued by the City, “any and all projects that are in the planning stages” for the City, the budget for the golf course or alternatively an explanation for why there is no budget for the golf course, the agreement between the private company that manages the golf course and the city including profit and loss statements, and any tax abatements “that have passed within the first reading” and tax abatements that “are up for public hearing.”

The City responded to the second records request in correspondence dated June 1, 2017. The City noted that copies of five years of City Budgets, the agreement between the City and the golf course operator, and copies of the bond documentation for Old Stoney were available at the Clerk-Treasurer’s Office for the Complainant to pick up. The City again denied the requests for all active tax abatements, all active bond issues, and all projects in the planning stages for the City of Frankfort for lacking reasonable particularity pursuant to Indiana Code section 5-14-3-3(a)(1). The City Attorney indicated he thought the Complainant was interested in a particular project called “Project Home Run,” but the Attorney declared that the renderings of the project that the City possesses “constitute records that are intra-agency or interagency advisory or deliberative material developed by a private contractor that are expressions of opinion that have been communicated for the purpose of decision making” and thus are exempt from disclosure pursuant to Indiana Code section 5-14-3-4(b)(6).

The Complainant filed a complaint with my Office dated June 13, 2017 which my Office received on June 16, 2017. My Office notified the City of the complaint on June 19, 2017, and received the City’s response to the complaint on June 29, 2017.

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.” Ind. Code § 5-14-3-1. The City of Frankfort is a public agency



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for the purposes of the APRA. Ind. Code § 5-14-3-2(n). Accordingly, any person has the right to inspect and copy the City's disclosable public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. Ind. Code § 5-14-3-3(a). A request for inspecting or copying records must identify with reasonable particularity the record being requested. Ind. Code §5-14-3-3(a)(1).

I have addressed the question of reasonable particularity frequently in past opinions. In 16-FC-01, I opined that a broad request does not necessarily lack reasonable particularity. However, I also stated in that opinion that "if a public agency cannot ascertain what records a requestor is seeking, the request likely has not been made with reasonable particularity," and that "public records request should not contain language such as 'any and all.'" I provided in 16-FC-60 that "there is nothing wrong with a voluminous request as long it meets common sense standards of specificity." In 17-FC-52, I opined the following in regards to records requests for emails that are reasonable and specific:

[P]articularity must be *reasonable*. The Access to Public Records Act is not a license for universal requests for the *totality* of documents which may be in the custody of a public agency, hence the requirement for reasonable particularity. Elements of specificity must be identified. . . . Inherent in the concept of reasonableness is an element of *practicality*.

I emphasized in 16-FC-60 that "A public agency is not required to fulfill a request which lacks reasonable particularity." However, I also opined in 16-FC-147 that when "a request lacks reasonable particularity, the public agency is not required to conduct a vast search of all its records to produce each document which may fall within the broadly defined terms of the requestor. Rather, it may deny the initial request and require the requestor to craft a more specific request in which the documents sought are readily identifiable."

The City provides in its response that the Complainant's request for "all active tax abatements issued by the City of Frankfort" is not reasonably particular because the Complainant does not specify for which "firms, persons, properties or tax parcels" she wants tax abatement records, nor does she specify if she is requesting all supporting documentation provided by a taxpayer in an application for a tax abatement. The City states that the County is the issuing body for tax abatements and that the City is essentially a pass-through for determining whether the taxpayer's application is sufficient to justify an abatement before submitting the application to the County. However, it is worth noting that in neither of the responses to the Complainant did the City provide a suggestion as to how the Complainant could narrow her request to fit the standards for reasonable particularity or what might help the City identify the records the Complainant desired.



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The City makes a similar argument for denying the Complainant's request for all active bond issues. The City indicates in the response to the complaint that there are at least seven current bond issues by the City, and each bond issue contains "several hundred pages of documentation." However, the fact that a record may have several hundred pages of documentation does not affect whether the request lacks reasonable particularity. The number of pages contained in a record may affect what constitutes a reasonable time to respond to a records request, but so long as the record has been requested with reasonable particularity, the number of pages contained within a record should not be a factor in denial. Requesting the totality of bond issue documentation possessed by the City is not a reasonably particular request. Again, the City did not ask the Complainant to provide more information to narrow her request, nor did the City suggest how she could narrow her request, like requesting bonds by project name. I concur with the Attorney General's Office that an invitation to narrow a request should accompany a denial based upon a lack of reasonable particularity. However, this is not statutorily required, merely strongly suggested.

The Complainant also requested an explanation for why a budget does not exist for the city golf course. The APRA does not require public agencies to answer questions for information, nor does it require agencies to create new records responsive to a request. However, the City provided an explanation in its response sent to my Office – because the City does not operate the golf course. The City does not have a budget for the golf course, but the City noted that the department budgets provided to the Complainant "contain several line items for expenses allocated to the golf course."

Finally, the request for "any and all projects that are in the planning stages" is not a reasonably particular request. I opined in 17-FC-52 that it "is not the responsibility of any public agency to *guess* what records may or may not be responsive to a request." In this case, the City could not be expected to ascertain the records the Complainant sought without some guesswork. In the second correspondence sent from the City to the Complainant, the City did indicate that unless the Complainant provided a more specific request, the City could not respond to the request.

CONCLUSION

Based on the foregoing, it is the opinion of the Public Access Counselor that the City of Frankfort has not violated the Access to Public Records Act. It is my sincere hope that both parties will continue working together to ensure the flow of appropriately requested documents.

Regards,

Luke H. Britt



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

Public Access Counselor

Cc: Tammy Danner