
OPINION OF THE PUBLIC ACCESS COUNSELOR

KENNETH W. DAVIDSON,
Complainant,

v.

NORTHWEST INDIANA REGIONAL DEVELOPMENT
AUTHORITY,
Respondent.

Formal Complaint No.
17-FC-277

Luke H. Britt
Public Access Counselor

BRITT, opinion of the Counselor:

This advisory opinion is in response to a formal complaint alleging the Northwest Indiana Regional Development Authority (“RDA”) violated the Access to Public Records Act¹ (“APRA”). The RDA responded to the complaint through attorney David L. Hollenbeck. In accordance with Indiana Code § 5-14-5-10, I issue the following opinion to the formal

¹ Ind. Code §§ 5-14-3-1 to -10

complaint received by the Office of the Public Access Counselor on November 22, 2017.

BACKGROUND

Kenneth Davidson (“Complainant”) filed a formal complaint alleging the Northwest Regional Development Authority violated the Access to Public Records Act by failing to provide information within a reasonable time.

On November 13, 2017, Davidson hand-delivered a public records request to the RDA seeking draft agendas for a specific meeting as well as board packet documents. The RDA acknowledged the request, however, Davidson considered nine days an excessive amount of time to produce the documents and filed his complaint with this Office on November 22, 2017. Davidson takes exception to the fact that the RDA provided no estimated production date; the failure of the RDA to ever provide him with a document request policy; and the amount of time it took to fulfill his November 13, 2017 request.

The RDA responded by arguing that Indiana Code does not require an agency to provide an estimated date of production. The RDA also contends it was unaware of any document policy requests, however, one would be forwarded to him. Finally, the RDA argues it did not have a December or January meeting and the delay was a result of the lack of an opportunity for the RDA to decide as a collective which documents it would release to Davidson.

ANALYSIS

This formal complaint presents an issue of whether the Northwest Indiana Regional Development Authority's response time—nine calendar days—constitutes a *reasonable time* as required by 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." Ind. Code § 5-14-3-1. The Northwest Indiana Regional Development Authority is a public agency for the purposes of the APRA; and therefore, subject to its requirements. Ind. Code § 5-14-3-2(n). Thus, any person has the right to inspect and copy the RDA'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).

Reasonable Time

Under APRA, a public agency may not deny or interfere with the exercise of the right for any person to inspect and copy a public agency's disclosable public records. Ind. Code § 5-14-3-3(a). Toward that end, within a *reasonable time* after the request is received by the agency, the public agency shall either:

- (1) provide the requested copies to the person making the request; or

(2) allow the person to make copies:

(A) on the agency's equipment; or

(B) on the person's own equipment.

In this case, the parties disagree about what constitutes a *reasonable time* as it pertains to the Davidson's request. Notably, the APRA does not specifically define what constitutes a *reasonable time* as it pertains to the production of, or inspection of, responsive records. Often, this Office is asked to make a determination as to the reasonableness of the time for production by a public agency. What is a reasonable time period under one circumstance may not be reasonable in another. What is more, the production of responsive records need not materially interfere with the regular discharge of the functions and duties of the public agency. *See* Ind. Code § 5-14-3-7(a).

The request in the instant case is not complicated, historical, or complex. In fact, it is one of the more mundane requests this office sees. While the timing of the submission of his formal complaint was a bit premature – generally 30 days is a good benchmark for a “reasonable timeliness complaint” – Davidson makes a salient point that records such as these should be readily accessible.

The RDA does not cite any reason for the delay other than “the NWRDA Board did not meet in December or January and as such has not had an opportunity to review the matter.” This justification fails as a matter of practicality and a matter of law. APRA is clear that “[p]roviding persons with the 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 (Emphasis added).

The law does not say that public records requests shall be processed at the convenience of the agency or when they simply have time to get around to it. If every public records request were to pend until a board or agency has its next meeting, the delay in time would be excessive and gratuitous. There are a myriad of ways to delegate the handling of public records requests between meetings, including potential redaction. This becomes all the more so where the request is relatively innocuous.

Routine requests do not require a vote or necessitate profound deliberations. I do not believe the RDA is acting in bad faith, but I strongly recommend it revise its approach and methodology to handling public records requests.

CONCLUSION

Based on the foregoing, it is the opinion of the Public Access Counselor that the Northwest Indiana Regional Development Authority violated the Access to Public Records Act by unreasonably delaying release of routine documents until the matter is voted upon at its next meeting.

A handwritten signature in black ink, appearing to read 'LH Britt', with a stylized flourish at the end.

Luke H. Britt
Public Access Counselor