

STATE OF INDIANA) IN THE FLOYD _____ COURT
) SS:
COUNTY OF FLOYD) CAUSE NO. _____

CNHI, LLC d/b/a NEWS AND TRIBUNE,

Plaintiff,

v.

CITY OF NEW ALBANY,

Defendant.

COMPLAINT FOR DISCLOSURE OF PUBLIC RECORDS UNDER THE ACCESS TO PUBLIC RECORDS ACT

Plaintiff, CNHI, LLC d/b/a News and Tribune (“News and Tribune” or “Plaintiff”), by counsel, for its complaint against the City of New Albany (the “City” or “Defendant”) and in accordance with the Indiana Access to Public Records Act (“APRA”), Indiana Code §§ 5-14-3-1–12, alleges as follows:

INTRODUCTION

1. For more than two years, Plaintiff News and Tribune has sought access to public records from Defendant sufficient to show the amount of taxpayer money Defendant has spent on litigation and other legal proceedings pertaining to the Providence Mill low-head dam on Silver Creek in New Albany, Indiana.

2. During that two-year timeframe, Defendant has *twice* wrongfully denied News and Tribune's requests pursuant to APRA for access to the requested records – first by wholly failing to respond to the request for 522 days, constituting a constructive denial, and subsequently

providing improper justification for withholding the requested records when pressed for an explanation by the Public Access Counselor.

3. The legal invoices and expenditure documents sought by Plaintiff are public records under APRA and must be disclosed upon request in the absence of an applicable exception to disclosure.

PARTIES

4. Plaintiff, CNHI, LLC, is a leading provider of local news in more than 130 communities in 19 states, including Indiana. News and Tribune is CNHI's 4,000-circulation newspaper covering Clark and Floyd counties in southern Indiana.

5. Defendant, City of New Albany, is a public agency and second-class city located in Floyd County, Indiana, where the agency's principal office is located. *See* Ind. Code § 5-14-3-2(s)(2)(A).

JURISDICTION AND VENUE

6. This action arises from the City's refusal to provide public records to the News and Tribune following requests made pursuant to APRA. Ind. Code §§ 5-14-3-1 *et seq.*

7. This Court has jurisdiction over the subject matter of this action and the parties. *See* Ind. Code § 5-14-3-9.

8. Venue is both proper and preferred in Floyd County pursuant to Indiana Trial Rule 75(A)(8) and Indiana Code § 5-14-3-9(e),¹ and also under Indiana Trial Rule 75(A)(5).

THE ACCESS TO PUBLIC RECORDS ACT ("APRA")

9. APRA explicitly states that "it is the public policy of the state that all persons are

¹ "A person who has been denied the right to inspect or copy a public record by a public agency may file an action in the circuit or superior court of the county in which the denial occurred to compel the public agency to permit the person to inspect and copy the public record." Ind. Code § 5-14-3-9(e).

entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees.” Ind. Code § 5-14-3-1.

10. APRA also declares “[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.” *Id.*

11. APRA places the burden of proof for the nondisclosure of a public record on the public agency denying access to the record. *Id.*

12. APRA defines “public record” as “any writing, paper, report, study, map, photograph, book, card, tape recording, or other material that is created, received, retained, maintained, or filed by or with a public agency and which is generated on paper, paper substitutes, photographic media, chemically based media, magnetic or machine readable media, electronically stored data, or any other material, regardless of form or characteristics.” Ind. Code § 5-14-3-2(t).

13. A “public agency” under APRA includes any “county, township, school corporation, city, or town, or any board, commission, department, division, bureau, committee, office, instrumentality, or authority of any county, township, school corporation, city, or town.” Ind. Code § 5-14-3-2(s)(2)(A).

14. “If the public agency does not deny the request, 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[.]” Ind. Code § 5-14-3-3(b).

15. Indiana Code § 5-14-3-9(e) allows a plaintiff “who has been denied the right to inspect or copy a public record by a public agency [to] file an action in the circuit or superior court of the county in which the denial occurred to compel the public agency to permit the person to

inspect and copy the public record.”

16. Under APRA, this Court reviews the matter *de novo*, with the burden of proof for nondisclosure on the public agency denying access. *See* Ind. Code § 5-14-3-1; *see also* Ind. Code § 5-14-3-9(f).

17. “In any action filed under this section, a court shall award reasonable attorney’s fees, court costs, and other reasonable expenses of litigation to the prevailing party if . . . the plaintiff substantially prevails.” Ind. Code § 5-14-3-9(i).

FACTUAL BACKGROUND

The Underlying Litigation and Reporting

18. In May 2024, 14-year-old Andre “AJ” Edwards, Jr. drowned at the Providence Mill low-head dam (the “Dam”) in New Albany, which led to increased calls for the Dam’s removal due to safety concerns. *See* Brooke McAfee, *Mother of Teenager who Drowned at Silver Creek Dam Files Lawsuit*, News & Trib. (Mar. 25, 2025) (attached as **Exhibit A**).

19. Even prior to AJ’s death, the Dam had been the subject of community controversy over its safety, leading to multiple administrative appeals and lawsuits at the state and local level since 2021. *See, e.g.,* Brooke McAfee, *City of New Albany, DNR Settle Lawsuit, Agree to Removal of Providence Mill Dam*, News & Trib. (Dec. 4, 2025) (attached as **Exhibit B**).

20. The removal of the Dam began in January 2026 following a settlement in a separate lawsuit between the City and the Department of Natural Resources. Brooke McAfee, *Providence Mill Dam Removal Underway in Silver Creek*, News & Trib. (Jan. 13, 2026) (attached as **Exhibit C**).

21. Plaintiff reported extensively on AJ’s death, the multiple legal battles related to the Dam, and the Dam’s removal.

Plaintiff's Public Records Request

22. As part of its reporting on the Dam, Plaintiff requested public records from Defendant to elucidate how much public money Defendant has expended on legal counsel in litigation related to the Dam.

23. On June 13, 2024, shortly after AJ's death, News and Tribune journalist Brooke McAfee filed a public records request with the City in accordance with APRA seeking documents detailing the costs incurred by the City related to litigation and other legal proceedings regarding the Dam (the "Request," attached as **Exhibit D**).

24. McAfee specifically requested public records showing the "costs of legal fees in the case heard by [the] Indiana Natural Resources Commission and the ongoing lawsuit against River Heritage Conservancy and EcoSystems Connections Institute." *Id.* McAfee also requested public records showing "all costs associated with expert testimony in these cases." *Id.*

25. On July 30, 2024, Defendant's legal counsel, Shane Gibson, confirmed receipt of McAfee's public records request (attached as **Exhibit E**) and indicated it would be "done in [the] next few days."

26. McAfee followed up with Mr. Gibson by email (attached as **Exhibit F**) on August 21, 2024, but did not receive any further response.

Plaintiff Files Formal Complaints with the Public Access Counselor

27. On August 30, 2024, after submitting the Request, following up with Defendant's legal counsel, and receiving no responsive records or a written denial from Defendant, Plaintiff filed a formal complaint ("PAC Complaint") with then-Indiana Public Access Counselor ("PAC") Luke Britt (attached as **Exhibit G**).

28. In the PAC Complaint, Plaintiff asserted Defendant violated APRA by improperly

denying access to the requested records. *Id.*

29. APRA explicitly states: “If the public agency does not deny the request, 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[.]” Ind. Code § 5-14-3-3(b).

30. At the time of filing the PAC Complaint, over two months after the Request was submitted, Defendant had neither denied the Request nor disclosed any responsive public records.

31. Plaintiff followed up with the PAC on September 13, 2024, to confirm receipt of the formal complaint (attached as **Exhibit H**).

32. On September 15, 2024, the PAC responded to Plaintiff by email confirming receipt of the formal complaint and noting that he had contacted the City for a response. Ex H.

33. Plaintiff followed up again with the PAC on December 30, 2024, and requested an update on the status of the formal complaint (attached as **Exhibit I**).

34. That same day, Mr. Britt emailed Plaintiff and stated that he had spoken with the City about the matter and that the City intended to provide the responsive records after resolution of the pending litigation related to the Dam. Ex. I.

35. Although the PAC did not formally dispose of or resolve Plaintiff’s PAC Complaint, Mr. Britt suggested that without a denial from the City of the then-months-old records Request, he would decline to weigh in on the dispute. *Id.*

36. After Mr. Britt declined to weigh in, 249 more days elapsed (from December 30, 2024 to September 5, 2025), with Plaintiff hearing nothing further from the City regarding the Request.

37. On September 5, 2025, 449 days after its initial Request, Plaintiff resubmitted the

formal complaint with the new Public Access Counselor Jennifer Ruby, who was appointed to the position in March (attached as **Exhibit J**).

38. On October 17, 2025, the PAC sent Defendant a written notice of Plaintiff's formal complaint and solicited a response (attached as **Exhibit K**).

39. Finally, on November 17, 2025 – **522 days** after Plaintiff's initial Request – Defendant filed a response to Plaintiff's complaint with the PAC (attached as **Exhibit L**) and finally contended that releasing the requested records “could well comprise legal strategy and resolution to these matters as the cases are nearing final completion.” Ex. L.

40. Defendant further claimed the requested records had been “deemed confidential legal information as it relates to attorneys and ongoing lawsuit strategy.” *Id.*

41. The City further asserted that its legal counsel had spoken with Public Access Counselor Britt sometime in August of 2024 and “[a]t that time, it was understood that the legal matters would be allowed to proceed and finalize prior to addressing [the] request, as to not potentially comprise [sic] legal positions and strategy.” *Id.*

42. The City's response to Plaintiff's resubmitted PAC Complaint cited no statutory authority or precedential caselaw to support the nondisclosure of the requested records or legal authority authorizing a public agency to “deem” public records confidential and thus exempt from disclosure under APRA. *Id.*

The Public Access Counselor Concludes City's Denial of Access Was Improper

43. On August 13, 2026, nearly a year after Plaintiff refiled its formal complaint and **791 days** after Plaintiff's initial Request, Ms. Ruby issued Advisory Opinion 25-FC-280 (attached as **Exhibit M**), concluding the City “violated APRA as alleged in the complaint” and recommended the City “release the redacted invoices or legal cost totals ...as soon as practical,

per [the] APRA requests, if it has not already done so.” Ex. M at 3.

44. In the Advisory Opinion, the PAC also observed that “the legal invoices of public agencies are public documents which must be disclosed” and acknowledged the City is “entitled to redact” nondisclosable information from the documents. *Id.*

45. To date, Defendant has not provided any records responsive to Plaintiff’s Request.

COUNT I
Improper interference with Plaintiff’s statutory right to inspect and
copy public records within a “reasonable time”

46. Plaintiff incorporates the previous paragraphs of the Complaint as though fully set forth herein.

47. Plaintiff made the Request for public records showing the legal fees and other costs associated with the City’s litigation challenging the removal of the Providence Mill low-head dam on June 13, 2024, and following the City’s initial acknowledgement of Plaintiff’s Request, Defendant has not produced records responsive to the Request for more than 839 days – well over two years.

48. APRA explicitly prohibits a public agency from denying or interfering with the right to inspect and copy public records and requires an agency to respond to an APRA request within a “reasonable time” after the request is received by the agency. Ind. Code § 5-14-3-3(b).

49. Under APRA, an agency’s response to a public records request must do one of the following: (1) release the public records requested; (2) allow the requester to make copies of the subject records; or (3) issue a written denial that cites the applicable statutory exception or legal authority justifying nondisclosure. Ind. Code § 5-14-3-3(b)(1)–(2).

50. The City did not respond to Plaintiff’s Request by providing the requested copies, allowing Plaintiff to make copies, or providing a written denial of disclosure pursuant to Indiana

Code § 5-14-3-9(d) within a reasonable time after the Request was received by the agency.

51. As a result, Defendant violated Indiana Code § 5-14-3-3(b). Accordingly, this Court should issue an order declaring that Defendant's delay in responding to Plaintiff's public records Request constitutes a failure to comply with APRA's "reasonable time" provision.

52. The Court should also declare that Defendant's egregious disregard of a clear statutory duty constitutes a violation of Indiana Code § 5-14-3-3(b).

COUNT II
Improper denial of Plaintiff's right to inspect or copy public records

53. Plaintiff incorporates the previous paragraphs of the Complaint as though fully set forth herein.

54. Defendant's categorical refusal to provide public records constitutes an unlawful denial of disclosure and interference with Plaintiff's statutory right to inspect and copy public records, in violation of Indiana Code § 5-14-3-3(a).

55. Plaintiff is entitled to inspect and copy the records sought in the Request in the absence of an applicable exemption or exception to disclosure.

56. In violation of APRA's public policy and in contravention of the Public Access Counselor's Advisory Opinion, Defendant has categorically and improperly withheld these public records from disclosure.

57. Even if the requested public records contain both disclosable and nondisclosable information, APRA mandates that public agencies – like Defendant – “separate the material that may be disclosed and make it available for inspection and copying.” Ind. Code § 5-14-3-6(a).

58. Defendant violated APRA by denying Plaintiff's access to the public records sought in the Request. This Court should issue an order concluding that the requested public records are disclosable under APRA and compel Defendant to disclose the records in accordance

with the command of the statute.

DEMAND FOR RELIEF

WHEREFORE, Plaintiff, CNHI, LLC d/b/a News and Tribune, respectfully requests this Court:

59. Expedite the hearing of this action as required by Indiana Code § 5-14-3-9(l).
60. Issue an order declaring that Defendant failed to respond to Plaintiff's APRA Request in a reasonable time, which constitutes a violation of Indiana Code § 5-14-3-3(b).
61. Issue an order compelling Defendant to disclose the public records requested on June 13, 2024, and any records responsive to the Request created since the date of its initial filing.
62. Award Plaintiff reasonable attorney's fees and costs, as required by Indiana Code § 5-14-3-9(i), in an amount to be shown to the Court.
63. Award any other relief deemed just and proper by the Court.

Respectfully submitted,

/s/ Kristopher L. Cundiff

Kristopher L. Cundiff, # 35193-49
REPORTERS COMMITTEE FOR
FREEDOM OF THE PRESS
PO Box 150
FISHERS, IN 46038
(463) 271-4676
kcundiff@rcfp.org

Attorney for Plaintiff

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing has been filed, via Indiana's Electronic Filing System (IEFS) on September 30, 2026, to the following:

Shane L. Gibson (Attorney #: 21642-22)

City of New Albany
142 E. Main St., Suite 310
New Albany, IN 47150
sgibson@cityofnewalbany.com

The undersigned also certifies that a copy of the foregoing is to be served by certified mail, along with a filed stamped copy of the Complaint and Summons, to the following:

The Honorable Jeff Gahan

Mayor of New Albany
142 E. Main St., Suite 310
New Albany, IN 47150

/s Kristopher L. Cundiff

Kristopher L. Cundiff, # 35193-49
REPORTERS COMMITTEE FOR
FREEDOM OF THE PRESS
PO Box 150
FISHERS, IN 46038
(463) 271-4676
kcundiff@rcfp.org

Date: September 30, 2026