
OPINION OF THE PUBLIC ACCESS COUNSELOR

ROBERT EVANS,
Complainant,

v.

CITY OF INDIANAPOLIS,
Respondent.

Formal Complaint No.
23-FC-73

Luke H. Britt
Public Access Counselor

BRITT, opinion of the counselor:

This advisory opinion is in response to the formal complaint alleging the City of Indianapolis violated the Access to Public Records Act.¹ Deputy Chief Counsel, Toae Kim, filed an answer on behalf of the city. 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 August 15, 2023.

¹ Ind. Code § 5-14-3-1-10.

BACKGROUND

In this case we consider whether the City of Indianapolis (City) violated the Access to Public Records Act by inviting a requester to narrow the scope of his public records request for the sake of specificity.

On July 3, 2023, Robert Evans (Complainant), filed a public records request with the City of Indianapolis' Mayor's Office seeking the following:

All emails, calendar entries, phone records, meeting notes, electronic messages (Slack, Teams, etc) for the listed days [May 25, 2020 – June 1, 2020]. Additionally all evidence & testimony provided by these individuals [Joe Hogestt (*sic*), David Hampton, any person holding the title of personal assistant, executive assistant, secretary and/or Chief of Staff to the Mayor] to the IMPD Riot Review panel in 2021 that was tasked to investigate the riots in 2020.

An automated response acknowledged the request the same day.

On July 18, 2023, the Mayor's Office contacted Evans and asked him to narrow the focus of his request within five days or the city would consider the matter closed.

On July 23, 2023, Evans expanded the request to include the following:

[A]ny party with the title of Director of Communications or Deputy Mayor of Health and Public Safety

Any communications/calendars of any type by and/or between the parties listed relating to[:]

Indiana Code § 36-3-3-3(a) and/or (b) – Succession Plan

To include comms relating to actual certification of the plan or any party in discussion regarding the may foregoing the duties of his office [:]

[T]ransferring the duties of his office

[B]eing out of the county

Incapacitated or unavailability to fulfill his duties

Vacation

Specifically all calendar entries for Mayor Hogsett during the dates listed in the request to include those of his assistant or whatever party manages his calendar if he does not keep on himself

...

Possible email addresses and calendars to filter these terms and dates against are: joe@one-cityindy.org, joseph.hogsett@gmail.com, any non-indy.gov email from the listed parties that have at any time been used for official city business.

Any communications relating to the civil unrest, riots, protests or any reasonably understood term used by the administration and/or the City County Council to describe the events referenced in Executive Order No. 6 2020 [HTML link omitted]

Possibly search terms may include the below with any reasonable spelling, term or concept used by the named parties to refer to the below[:]

Dreasjean Reed

George Floyd

Protests

Black Lives Matters

Indy10 Black Lives Matters

BLM

Chief Randall Taylor

Dorian Murrell

Chris Beaty

Zach Adamson

Vop Osili

Any member of the Indianapolis Marion County City-County Council, either Indy.gov or personal emails use for government business

Out of Office notices for the Mayor

Any communications, calenders[sic] invites, agendas from the meeting listed below[:]

“Among the people Hogsett and his staff met with Saturday morning were leaders of the local Black Lives Matter chapter and the mother of Dreasjon Reed, who recorded himself being shot by IMPD officers following a police pursuit early this month. [HTML link omitted]

...

...I would like the cell phone records/bills to include numbers text information for the named parties for the dates of May 28th-May 31st 2020.

Additionally, I would like the job description for the Deputy Mayor or Neighborhoods as it stood while David Hampton held the job in 2020

On July 28, 2023, the City issued another invitation to Evans to narrow his request.

Although it could not be located in the materials provided, Evans alleges he was denied the requested records because the City demanded that he supply the actual personal email address of staff instead of just their names.

Evans also takes exception to the five-day window in which to narrow his request because some of those days included the weekend.

Finally, he references a previous denial from the City where Evans requested records related to the mayor's emails. The City asserted the mayor did not have an email address. Evans challenges the veracity of that response.

Evans filed a formal complaint with this office on August 15, 2023.

On September 15, 2023, the City responded challenging Evans' allegations. Specifically, the City argues the request for clarification was appropriate, yet Evans chose to expand his request instead. It also maintains that its employees conduct their business using City servers and not personal email accounts.

ANALYSIS

1. The Access to Public Records Act

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 City of Indianapolis (City) is a public agency for purposes of APRA; and therefore, subject to its requirements. *See* Ind. Code § 5-14-3-2(q). As a result, unless an exception applies, any person has the right to inspect and copy the City’s public records during regular business hours. Ind. Code § 5-14-3-3(a).

Indeed, APRA contains mandatory exemptions and discretionary exceptions to the general rule of disclosure. *See* Ind. Code § 5-14-3-4(a) to -(b).

2. Evans’ request and reasonable particularity

The core of this dispute centers on whether Evans’ request meets the reasonable particularity standard set by APRA, our courts, and this office. Under APRA, a request for inspection or copying “must identify with reasonable particularity the record being requested.” Ind. Code § 5-14-3-3(a)(1).

Requiring reasonable particularity relieves a public agency from the guesswork of anticipating exactly what a requester is seeking. It also prevents a document “dump” on an unsuspecting requester.

To be clear, reasonable particularity should not be used as a sentinel by an agency to ward off inconvenient or inopportune requests. At the same time, it should not be wielded in a draconian manner to frustrate or hamper requests by requiring absolute precision and exactitude. A measure of grace should be extended to requesters who may not be able pinpoint every meticulous detail – rather the expectation is *reasonable* specificity. All too often agencies rely upon reasonable particularity to summarily dismiss a request.

But not here.

The exact recitation of Evans' request above was purposeful. Instead of tapering his request to provide clarity and elucidation, he unfortunately expanded his request instead of narrowing it. This is not requester-shaming, but rather demonstrating how an unpruned bramble of a request rarely yields good fruit.

While effective for obtaining budgets, invoices, receipts, minutes and other transactional, tangible documents, the public records process is a very unwieldy instrument when used to audit widespread activities of an agency or proving the existence of negatives. It is also often an inefficient method for acquiring emails, which is an issue the legislature may wish to address in the future with legislation.²

² Notably, the retention schedule for communication is three years per the county and local retention schedule set by the Indiana Oversight Committee on Public Records GEN 10-04. To the extent the emails have been discarded three years on, it is appropriate records management. <https://www.in.gov/iara/files/county-general.pdf>

Therefore, the City was justified in pushing back on Evans' request to untangle its ambiguity.

3. Ancillary issues

Evans, however, has a point when it comes to the issue of the time the City allotted him to respond to its invitation to narrow the request. The information provided indicates the City only afforded Evans a mere five days to restructure his request into something practical and definite.

The City would be well served to allow a bit more time for a requester to retool a request to meet expectations of reasonable particularity.

When it comes to personal email addresses, while it is true that public employees using non-government accounts³ is not illegal *per se*, it is inadvisable.

Toward that end, if a request is made for messages pertaining to public business and an employee dabbles in sending those messages on private servers, they should be treated as if they were public records and addressed accordingly. Evans would not be in the wrong for seeking those as well, even if they do not exist.

Finally, Evans takes exception to the intimation that the mayor does not use an email account for public business. It has been represented to this office that other elected officials, including former Indianapolis Mayor Ballard, did not

³ This office recognizes that not all public employees and officials are issued government accounts, especially in rural communities. Those issues, not necessarily at play here, have been – and will be – addressed elsewhere in other opinions in terms of how to handle those situations with fidelity.

use email. Either with intentionality or not, there is nothing mandating the use of email for communicating public business, only that if it is used, it is public record potentially subject to request.

CONCLUSION

Based on the information provided by both parties, it is the opinion of this office that the City of Indianapolis did not violate the Access to Public Records Act.

A handwritten signature in black ink, appearing to read 'LH Britt', is positioned above the printed name.

Luke H. Britt
Public Access Counselor

Issued: September 26, 2023