



STATE OF INDIANA

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OPINION OF THE PUBLIC ACCESS COUNSELOR

BRIAN SLODYSKO,)

Complainant)

v.)

OFFICE OF FORMER GOVERNOR MIKE PENCE)

Respondent)

17-FC-13

ADVISORY OPINION

March 6, 2017

This advisory opinion is in response to the formal complaint alleging the Office of Former Governor Mike Pence (“Former Governor”) violated the Access to Public Records Act (“APRA”), Indiana Code § 5-14-1.5-1 et. seq. The Office of Governor Eric Holcomb responded on behalf of the Pence Administration via Mr. Joseph R. Heerens, Esq., General Counsel. Pursuant to 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 January 23, 2017.

BACKGROUND

The formal complaint dated January 17, 2017 alleges the Former Governor’s Office violated the APRA by not responding to a public records request in a reasonable time.

In July 2016, a public records request was sent requesting all emails in relation to official state business between nine (9) different named parties. Receipt of the request was acknowledged, but not denied on July 26, 2016 by the Former Governor’s Communication Director. The Complainant did not receive any further communication from the Governor’s Office.



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Current Governor Holcomb's Office responded by arguing the initial request was not reasonably particular by generally accepted standards of specificity. It also reiterated its willingness to work with the Complainant to gather and produce disclosable records should the request be sufficiently narrowed.

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 Office of the Governor is a public agency for the purposes of the APRA. *See Indiana Code § 5-14-3-2(n)*. Accordingly, any person has the right to inspect and copy the Governor'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)*.

A critical element of a proper public records request is reasonable particularity. *See Indiana Code § 5-14-3-3*. In regard to email requests, my Office has consistently advised requesters there are four (4) elements to a reasonably particular search for an email message: a named sender, a named recipient, a timeframe of six months or less, and a set of search terms or subject matter as a parameter. These guidelines are not arbitrary. They exist to prevent "fishing expeditions" for issues a requester may be unaware of, but hope to discover by retrieving a broad set of records. They also help save the limited time and resources available to public agencies in having to procure massive sets of records.

The initial request in the instant case was simply a search for any and all emails from a list of staff members over a three (3) year period. The request, in its current form, indeed lacks reasonable particularity. 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. This did not happen and it appears as if the Former Governor's Office accepted the Complainant's request in its initial form.

Once a request has been accepted, an agency has a reasonable time to fulfill a request after the acknowledgement period. As I previously stated in *Opinion of the Public Access Counselor 16-FC-320*, the reasonable time standard was justifiably stretched based on the extra-ordinary circumstances surrounding the 2016 election cycle. That case involved a request made less than three (3) weeks before Election Day. However, the request in the case at hand was submitted with more than five (5) months left in the administration. The Complainant was never given the indication of an invitation to narrow his request or that a denial was forthcoming. In prior situations, the Former Governor's Office invited



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requesters to narrow down the scope of a non-specific request to meet the heretofore mentioned standards. Based on the information provided, it does not appear the Complainant was extended a similar opportunity. It can be reasonably inferred the request was deemed denied by the Pence Administration after a reasonable time had elapsed.

It is important to note a public agency may not simply ignore a request even if it does not meet standards of specificity. This appears to have happened after the initial receipt of the request on July 26, 2016. Therefore, while an invitation to narrow a request is not a statutory requirement, a written denial is required. Pursuant to Indiana Code § 5-14-3-9(d), if a request initially is made in writing, the agency may deny the request if:

- (1) the denial is in writing or by facsimile; and
- (2) the denial includes:
 - (A) a statement of the specific exemption or exemptions authorizing the withholding of all or part of the public record; and
 - (B) the name and the title or position of the person responsible for the denial.

A denial would have been justified based on the Complainant's request. That denial would have necessitated a written statement from the Former Governor's Office pursuant to the APRA. To its credit, it appears the current Governor's Office has extended the opportunity to the Complainant to narrow a renewed request to meet standards of specificity. My recommendation is to amend the scope of your request if you still seek email communication between the named parties. Please be advised there may be other statutory justifications for denial or redaction even with a reasonably particular request.

CONCLUSION

Based on the foregoing, it is the Opinion of the Public Access Counselor the Office of Former Governor Mike Pence acted contrary to the Access to Public Records Act by omitting to issue a written denial of the Complainant's initial request.

Luke H. Britt

A handwritten signature in black ink, appearing to read "L. Britt".

Public Access Counselor

Cc: Mr. Joseph R. Heerens, Esq.