
OPINION OF THE PUBLIC ACCESS COUNSELOR

CHRIS S. NARDI,
Complainant,

v.

HAMILTON CO. EMERGENCY MANAGEMENT
DEPT.,
Respondent.

Formal Complaint No.
20-FC-118

Luke H. Britt
Public Access Counselor

BRITT, opinion of the counselor:

This advisory opinion is in response to a formal complaint alleging the Hamilton County Emergency Management Department violated the Access to Public Records Act.¹ Deputy County Attorney Patrick Sullivan filed an answer on behalf of the Department. In accordance with Indiana Code

¹ Ind. Code § 5-14-3-1-10.

§ 5-14-5-10, I issue the following opinion to the formal complaint received by the Office of the Public Access Counselor on August 24, 2020.

BACKGROUND

This case involves a dispute over access to daily situation reports relating to Hamilton County's COVID-19 response.

On April 28, 2020, Chris S. Nardi (Complainant) filed a public records request with the Hamilton County Emergency Management Department (Department) seeking the following:

Copies of daily situation reports produced by the Hamilton county Emergency Management Office.

After multiple follow-up emails, Director Shane Booker responded to the request on July 24, 2020. Booker denied Nardi's request and stated that the requested records were internal documents, which meant that they could not be released to the public. On August 20, 2020, Nardi filed a formal complaint with this office alleging the denial violates the Access to Public Records Act (APRA). Nardi argues that the Department failed to cite the legal authority that would allow the agency to withhold public records he requested.

On October 8, 2020, the Department filed a response to Nardi's complaint denying it violated APRA. First, the deputy county attorney acknowledges that APRA requires public agencies to specifically cite the statute being used to justify their decision to withhold specific records from disclosure. He maintains, however, that Director Booker's denial

of Nardi's request was appropriate and the lack of legal citation was simply an oversight. The Department argues the appropriate statute is Indiana Code section 5-14-3-4(b)(6), which is APRA's deliberative materials exception. The Department contends the daily situation reports requested by Nardi qualify as intra-agency or interagency advisory or deliberative material; and thus, the exception applies. The Department maintains the information used to create the reports was speculative and used to help form decisions and implement policies to protect the general public during the COVID-19 pandemic.

The Department concedes that some of the information included in the reports has been made public. This means that the Department will be providing Nardi with redacted copies of the reports, sharing only the information that does not meet the previously mentioned exception.

ANALYSIS

1. The Access to Public Records Act

It is the public policy of the State of Indiana that all persons are 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.

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 Hamilton County Emergency Management Department (Department) 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 Department's public records during regular business hours. Ind. Code § 5-14-3-3(a). Indeed, APRA contains exceptions—both mandatory and discretionary—to the general rule of disclosure. *See* Ind. Code § 5-14-3-4(a)—(b).

2. Denials

Nardi argues that the Department denied his request without citing the legal authority for withholding the records in the denial.

APRA allows denial of records if certain criteria are met. Naturally, the record must first fall into a category of records meriting an exemption or exception to disclosure. Second, a denial of a written request must be accompanied by a statement of the specific exemption or exemptions authorizing the withholding of all or part of the public record; and the name and the title or position of the person responsible for the denial. *See* Ind. Code § 5-14-3-9(d)(2).

Initially, the Department denied the request on grounds that the requested records were internal and not subject to disclosure. While this may be an informal way of citing APRA's deliberative materials exception, a denial must actually cite a legal standard.

The Department's response to the formal complaint does cite Indiana Code section 5-14-3-3(b)(6) and argues its application. The types of records requested indeed do fall into this statute as:

Records that are intra-agency or interagency advisory or deliberative material, including material developed by a private contractor under a contract with a public agency, that are expressions of opinion or are of a speculative nature, and that are communicated for the purpose of decision making.

Nardi does not argue that the records are not covered by a disclosure exception; only that the Department did not cite legal standard in the denial. Even so, the Department acknowledges this oversight in its response and carries its burden of justifying the denial. The Department also pledged to disclose the records which would have been made available after the decision-making process was complete. The technical oversight, while significant in terms of strict compliance, did not ultimately impact the eventual production of records.

CONCLUSION

Based on the foregoing, the Hamilton County Emergency Management Department failed to correctly cite a legal standard for withholding the record, however, eventually produced the records and acknowledged its oversight, bringing it into compliance with 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