OPINION OF THE PUBLIC ACCESS COUNSELOR

SUGATO CHAKRAVARTY,
Complainant,

v.

PURDUE UNIVERSITY,
Respondent.

Formal Complaint No.
20-FC-24

Luke H. Britt
Public Access Counselor

BRITT, opinion of the Counselor:

This advisory opinion is in response to a formal complaint alleging that Purdue University violated the Access to Public Records Act.[1] Legal Services Coordinator Kaitlyn Heide filed an answer to the formal complaint with this office. 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 February 18, 2020.

[1] Ind. Code § 5-14-3-1–10

BACKGROUND

This case involves a dispute over the application of several different APRA exemptions to deny a public records request by way heavy redaction.

On September 4, 2019, Professor Sugato Chakravarty, filed a public records request with Purdue University seeking the the following:

1. All electronic correspondence, including emails, by and between Dean Marion Underwood and any third person containing any reference to Professor Sugato Chakravarty from August 1, 2018 to September 10, 2019. Such reference includes "Sugato", "Professor Chakravarty", "Chakravarty", "Dr. Chakravarty", and the like.
2. All electronic correspondence, including emails, by and between Professor Thomas Berndt and any third person containing any reference to Professor Sugato Chakravarty from March 1, 2019 to September 10, 2019. Such reference includes "Sugato", "Professor Chakravarty", "Chakravarty", "Dr. Chakravarty", and the like.
3. All electronic correspondence, including emails, by and between Professor Richard Ghiselli and any third person containing any reference to Professor Sugato Chakravarty from March 1, 2019 to September 10, 2019. Such reference includes "Sugato", "Professor Chakravarty", "Chakravarty", "Dr. Chakravarty".

4. All electronic correspondence, including emails, by and between former Dean Christine Ladisch and any third person containing any reference to Professor Sugato Chakravarty from August 1, 2018 to September 10, 2019. Such reference includes "Sugato", "Professor Chakravarty", "Chakravarty", "Dr. Chakravarty".

On the same day, Purdue emailed acknowledging receipt of the request.

On January 17, 2020, Professor Chakravarty received the first set of documents from Purdue, which consisted of 1066 pages. Notably, Purdue redacted 800 pages entirely and another 135 pages partially. Purdue relied on several different disclosure exceptions as authority for the redactions.

First, Purdue cited Indiana Code sections 5-14-3-4(a)(1) and (8) along with 4(b)(2), as authority for redacting attorney/client privileged communications and work product of an attorney.

Second, to the extent that the request sought personnel information the records were redacted in accordance with Indiana Code section 5-14-3-4(b)(8).

Third, Purdue redacted some material as interagency advisory and deliberative materials in accordance with Indiana Code section 5-14-3-4(b)(6).

Finally, Purdue redacted some records in accordance with Indiana Code section 5-14-3-4(a)(3) and the Family Educational Rights and Privacy Act (FERPA). *See* 20 U.S.C 1232g; and 34CFR Part 99.3.

On January 27, 2020, Professor Chakravarty received the second set of responsive documents from Purdue. This second set consisted of 806 pages, 700 of which were completely redacted and approximately 30 pages partially redacted.

Professor Chakravarty was not satisfied with the materials provided by Purdue and believes that its response is a violation of the Access to Public Records Act.

First, Professor Chakravarty argues that it is the responsibility of the public agency to indicate which statutory exception applies to which redacted information. Based on what was provided, the Complainant has no way of knowing how many records were actually produced and which denials and exceptions apply.

Second, Professor contends that APRA only allows agencies to redact the portions of a records that qualify under an exemption or exception. In other words, any part of the record that does not fall under the exemption must remain visible. Chakravarty believes Purdue's redactions were so heavy that there is no way all of the redacted information could fall under one of the cited exceptions.

Third, as part of the records produced by Purdue, Professor Chakravarty asserts that he received some otherwise non-disclosable documents thereby presumably waiving similar privileges for the remainder of the records.

On March 5, 2020, Purdue filed an answer with this office denying Chakravarty's claims that it improperly redacted and or withheld records in violation of APRA.

Purdue notes the complexity of Chakravarty's request, given the fact that he sought correspondence from four separate email accounts and lacked additional named senders and recipients.

Additionally, Purdue asserts that the key terms Chakravarty provided in the request were just variations of his name; and thus, making it more difficult to separate the messages that Dr. Chakravarty did and did not have access to. All of this is to say that the professor's request would require a significant amount of time and resources to process.

With that in mind, once Purdue began the work of processing the request there were a total of 192 messages found to be responsive. This was after the university separated out any duplicate messages along with any messages that constituted attorney-client privilege. Of the 192 messages, 108 included attachments that also had to be reviewed.

Purdue either withheld from disclosure certain messages or redacted portions of messages for the reasons cited in the original denial and provides commentary on the application of those exemptions to disclosure.

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. Purdue University 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 Purdue'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. In particular, APRA prohibits a public agency from disclosing certain records unless access is specifically required by state or federal statute or is ordered by a court under the rules of discovery. *See* Ind. Code § 5-14-3-4(a).

In addition, APRA lists other types of public records that may be excepted from disclosure at the discretion of the public agency. *See* Ind. Code § 5-14-3-4(b).

2. Chakravarty's request

The crux of Professor Chakravarty's formal complaint is that Purdue's redactions constitute a failure to permit inspection of the requested records and an improper denial of access under APRA. In response, Purdue argues that those exemptions are legitimate.

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 having to anticipate exactly what a requester is seeking. To borrow an idiom from our colleagues at the Hoosier State Press Association, a request should be more like a rifle less like that of a shotgun.

Although "reasonable particularity" is not statutorily defined, the Indiana Court of Appeals addressed the meaning of the phrase in two seminal cases. First, in *Jent v. Fort Wayne Police Dep*t.,[2] which involved a dispute about daily incident report logs, the court concluded that reasonable particularity "turns, in part, on whether the person making the request provides the agency with information that enables the agency to search for, locate, and retrieve the records." *Id.* at 34.

Second, in *Anderson v. Huntington County Bd. of Com'rs,*[3] the court specifically addressed reasonable particularity in the context of requests for emails and the sufficiency of search parameters. The *Anderson* court essentially ratified a 2012 advisory opinion of the public access counselor. In sum, that opinion began an ongoing effort by this office to pare down and identify the necessary factors of a particularized request for email records.

As a matter of course, this office has identified certain factors that make a request for email records reasonably particular. Specifically the factors include: (1) an identified sender; (2) identified recipient; (3) a subject matter; and (4) a timeframe of six months or less.

While not absolute, these factors are a starting point for email searches. Notably, Professor Chakravarty's request lacked some of these key factors. Nevertheless, Purdue accepted the request for processing.

Although it is difficult to fault an agency for accepting any request and making an effort to fulfill it, this office

[2] 973 N.E.2d 30 (Ind. Ct. App. 2012).
[3] 983 N.E.2d 613 (Ind. Ct. App. 2013).

consistently recommends that an agency invite a requester to narrow down the scope of a request to include the factors mentioned above. This lessens the burden on the agency, which makes fulfillment of the request more practical and efficient.

In this case, Purdue accepted the entirety of the request and processed it accordingly.

3. Purdue's redactions

Unsurprisingly, the production of documents was heavily redacted. In reality, this is often the case with requests for emails. While they are certainly public records, email – being a substitute for face-to-face or phone conversations – inevitably will contain sensitive information.

Without the benefit of seeing viewing the unredacted records in camera, it would be an overly presumptive exercise in futility to scrutinize each application and opine upon them. Simply put, this office cannot make a determination on the propriety of Purdue's redactions.[4]

Generally, however, the kind of production and redaction by Purdue in this case is consistent with other requests for emails that are similar scope. Public records exemptions and exceptions in Indiana are typically broader than privileges at the trial court level in the context of discovery. *See Popovich v. Indiana St. Dept. of Revenue*, 7 N.E.3d 406 (Ind.

[4] *Opinion of the Public Access Counselor* 15-FC-133 ("Unless specifically asked, this Office does not review public records in camera to determine the propriety of redactions. A value judgment, as to whether a redaction is proper, is better left for a trier of fact. The occasions when this Office has done so, have been in a non-adversarial situation outside the formal complaint process").

Tax Ct. 2014). In a fact-finding, attorneys may find standards of admissibility and relevance mutually exclusive from public records policy.

4. Privilege logs

Professor Chakravarty also takes exception to a lack of clarity as to which disclosure exceptions Purdue applied to what records and why.

As to the request for a sort of privilege log, APRA does not mandate the creation of such a document like the Freedom of Information Act (FOIA) or case law interpreting the FOIA. A privilege log or *Vaughn*[5] index is not required under APRA.

Again, with a request of this magnitude, it is common for a production to be heavily redacted for the reasons cited in Purdue's argument.

[5] *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973), *cert. denied*, 415 U.S. 977 (1974).

CONCLUSION

Based on the foregoing, it is the opinion of this office that Purdue University did not violate the Access to Public Records Act.

Luke H. Britt
Public Access Counselor