
OPINION OF THE PUBLIC ACCESS COUNSELOR

LINDSIE D. RANK,
Complainant,

v.

INDIANA UNIVERSITY,
Respondent.

Formal Complaint No.
20-FC-41

Luke H. Britt
Public Access Counselor

BRITT, opinion of the Counselor:

This advisory opinion is in response to a formal complaint alleging Indiana University violated the Access to Public Records Act.¹ Assistant General Counsel Abby K. Daniels 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 March 18, 2020.

¹ Ind. Code § 5-14-3-1-10.

BACKGROUND

This case involves a dispute over access to records related to Indiana University's (IU) decision to cancel the final event of this year's annual SexFest.

On February 12, 2020, Lindsie Rank (Complainant) filed a public records request with IU seeking the following:

1. Any documents reflecting "credible information about a planned disruption" that posed a threat to campus safety related to the event known as SexFest received by Indiana University- Bloomington, or its employees or agents, between February 4, 2020 and February 7, 2020
2. Any document reflecting or concerning Indiana University- Bloomington's response to the planned disruption identified in Request No. 1

Two days later, IU responded to Rank's request by asking that she provide further clarification on the documents requested. Specifically, IU asserted that Rank's request was not reasonably particular and noted that if she was interested in email correspondence, Rank would need to include the names of both the recipient and the sender of the correspondence.

On February 27, 2020, Rank responded to IU's email by explaining that she had been referencing a statement made by IU's spokesperson Chuck Carney. Carney informed the public that IU decided to cancel the remainder of SexFest after receiving credible information about a planned disruption. Rank noted that she simply wanted to review the material that would support the statement and that IU should not

have trouble retrieving those records since all they would need to do is ask Carney to identify the documents that support his statement.

On March 17, 2020, IU formally denied Rank's request for records. In the denial, IU explained that it was not the responsibility of any public agency to perform guesswork to determine what records may or may not be responsive to a request. IU, in part, relied on a previous opinion² of this office to support this assertion.

Rank filed a formal complaint on March 18, 2020.

Essentially, Rank asserts that the request, especially as amended on February 27, 2020, does not require any guesswork and provided IU enough information to "search for, locate, and retrieve the records" as determined in *Jent v. Fort Wayne Police Dep't*, 973 N.E.2d 30, 34 (Ind. Ct. App. 2012).

On April 6, 2020, IU filed an answer to Rank's complaint. IU contends that it never denied Rank's request, but simply requested that she provide a more detailed version of the request that met the standards of reasonable particularity.

IU dismisses Rank's complaints by citing Indiana Code section 5-14-3-3(a), which states that "a request must identify with reasonable particularity the records being requested." Furthermore, IU points to *Opinion of the Public Access Counselor*, 16-FC-150, where this office acknowledged that if a requester were allowed to tell a public agency to figure out what records the requester wanted it would be tantamount to a "fishing expedition," which is not the intention of the APRA as the legislature drafted it. IU requests this office

² *Opinion of the Public Access Counselor*, 17-FC-135 (2017).

find in favor of the university and reject the notion that public agencies should be required to ask its own employees to complete the reasonable particularity that the requester lacks knowledge to provide.

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. Indiana 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 IU’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).

1.1 Reasonable Particularity

Of all the provisions of the Access to Public Records Act – a short, yet complex set of laws – reasonable particularity is

often challenging to qualify. This is especially so regarding requests for email correspondence.

Toward that end, this office has consistently recognized that requests for emails and other forms of transmitted communication—in order to be reasonably particular—must identify, at minimum, the following four items: (1) Named sender; (2) Named recipient; (3) Time frame of six months or less; and (4) Particularized subject matter or set of search terms.³

This is a critical position because it reduces the tide of large, sweeping email requests that are searching for the proverbial needle in a haystack. Often a requester truly does not know if the smoking gun they're seeking even exists. They just hope to find it among a swath of messages caught in a large net.

On the contrary, some requests that do not precisely meet the standard set forth above can still be reasonable particular and specific enough to commence a search for purposes of APRA.

And so it is in this case.

Here, Rank had a concrete reason to believe that at least one document or record existed, which led IU to a particular decision. An IU spokesperson indicated the existence of credible information about a planned disruption of the event, which was either documented or not. Seemingly, that is a simple answer. And if multiple documents exist, surely there

³ See *Opinion of the Public Access Counselor, 17-FC-52 (2017)*

are not so many between those three days as to amount to a wild goose chase.

If this is an unreasonable presupposition, so be it. It may very well be that the task is larger than stated. But I am disinclined to think so. Rank's request is not a complete shot in the dark by a requester hoping to get lucky.

I do not fault IU for relying on sound precedent, but it may not perfectly fit the current circumstances. Case law on the matter contemplates hundreds and thousands of documents that may or may not be responsive to a request.⁴ The university spokesperson or someone else in a position of authority is likely to determine if that is the case. It is not unreasonable that IU make this determination before stalling out a request on a technicality. The other parameters inform the missing elements and the information provided is narrow enough to fill in the blanks, at least, to a degree.

⁴ *Anderson v. Huntington County Board of Commissioners*, 983 N.E. 2d 613 (Ind. Ct. App. 2013).

CONCLUSION

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

Nonetheless, this office recommends IU determine if a record indeed exists and not summarily rely on APRA's reasonable particularity provision as a predicate for a search declination in this case.



Luke H. Britt
Public Access Counselor