
OPINION OF THE PUBLIC ACCESS COUNSELOR

DAWN NETTLES,
Complainant,

v.

HOOSIER LOTTERY.
Respondent.

Formal Complaint No.
21-FC-120

Luke H. Britt
Public Access Counselor

BRITT, opinion of the counselor:

This advisory opinion is in response to a formal complaint alleging the Hoosier Lottery violated the Access to Public Records Act.¹ Director for Legal Affairs and Compliance Chuck Taylor filed an answer on behalf of the agency. 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 19, 2021.

¹ Ind. Code § 5-14-3-1-10.

BACKGROUND

This case involves a dispute over the degree of effort applied by a public agency to provide requested records accessible only by that agency but not necessarily house internally.

On July 26, 2021, Dawn Nettles (Complainant), a reporter with the *Lotto Report*, filed a public records request with the Hoosier Lottery seeking the following:

- 1) Mega Millions- “MUSL’s 15-page draw sales report” for the July 13, 2021, drawing
- 2) Powerball’s “14-page draw sales report” for the July 14, 2021, drawing

Nettles noted that the reports are produced by the Multi-State Lottery Association (MUSL) for all lotteries to download from the “members” page on the association’s website. Additionally, Nettles stated the reports are a complete breakdown of all aspects of each drawing.

On August 18, 2021, the Hoosier Lottery responded to Nettles’ request with five pages of reports for the Mega Millions and Powerball drawings that ended on July 13, 2021. The lottery also asserted that it included all documents responsive to Nettles’ request.

Nettles disagreed. As a result, she filed a formal complaint with this office on August 19, 2021. Essentially, Nettles argues that the Hoosier Lottery improperly denied her access to public records because the documents provided are incomplete versions of the reports she initially requested.

Nettles asserts that she explained to the Hoosier Lottery that the materials the agency provided were incomplete. She also contends the Hoosier Lottery provided only the

“amounts receivable” and the “analysis of prize reserve” reports for Mega Millions and Powerball drawings for the date in question rather than the full sales report for both games. These documents only consisted of two and three pages respectively, compared to the 15- and 14-page reports that she requested.

To remedy the situation, Nettles emailed the agency to inform them that the records provided were deficient, but never received a response.

On September 8, 2021, the Hoosier Lottery filed an answer denying Nettles’ allegations. In sum, the Hoosier Lottery argues that Nettles requested documents that the agency simply does not have in its possession. Although the Hoosier Lottery concedes that its staff must log into the Multi-State Lottery Association (MUSL) portal to view MUSL’s draw sales reports, the agency neither maintains nor downloads the reports in their entirety. Instead, the agency asserts that lottery staff only download and save portions of the draw sales reports necessary to do their jobs.

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 Hoosier Lottery 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 Hoosier Lottery's public records during regular business hours. Ind. Code § 5-14-3-3(a).

Under APRA, "public record" means:

any writing, paper, report, study, map, photograph, book, card, tape recording, or other material that is created, received, retained, maintained, or filed by or with a public agency and which is generated on paper, paper substitutes, photographic media, chemically based media, magnetic or machine readable media, electronically stored data, or any other material, regardless of form or characteristics.

Ind. Code § 5-14-3-2(r). Although public records are presumptively disclosable, APRA contains both mandatory exemptions and discretionary exceptions to disclosure. *See* Ind. Code § 5-14-3-4(a) to -(b).

2. Nettles' request

Here, Nettles submitted a request for documentation that is not necessarily in the custody of the Lottery.

This office has long observed that APRA does not require a public agency to create a record that would not otherwise exist. It becomes a little more complicated when an agency is part of a bigger repository for data and has access to generate reports.

The law contemplates this to a degree:

a public agency that maintains or contracts for the maintenance of public records in an electronic data storage system shall make reasonable efforts to provide to a person making a request a copy of all disclosable data contained in the records

Ind. Code § 5-14-3-3(d). It appears as if the reports requested are created by Multi-State Lottery Association (MUSL) but are done so on behalf of its members and easily obtained in the usual course of business.

From the information, it seems as if the reports requested can be obtained via reasonable efforts and staff would not need to go to extraordinary lengths to pull reports at their disposal.

Give the very specific nature of the request and the Lottery's ability to easily generate them, it is the Opinion of this office that it should do so. While MUSL is not a public agency, the reports are created for the benefit of the Lottery.

In light of the holding in *Knightstown Banner, LLC v. Town of Knightstown*, 838 N.E.2d. 117 (2005), "delegating the responsibilities of creating, receiving, and retaining [a record] to [a third party] does not thereby remove the document from the statute's definition of public document."

CONCLUSION

Based on the foregoing, it is the opinion of this office that the Hoosier Lottery should provide the materials requested.

A handwritten signature in black ink, appearing to read 'LH Britt', written in a cursive style.

Luke H. Britt
Public Access Counselor