OPINION OF THE PUBLIC ACCESS COUNSELOR

JOHN ENRIETTO
Complainant,

v.

WHITLEY COUNTY,
Respondent.

Formal Complaint No.
21-FC-122

Luke H. Britt
Public Access Counselor

BRITT, opinion of the counselor:

This advisory opinion is in response to a formal complaint alleging Whitley County violated the Access to Public Records Act.[1] Attorney Matthew Shipman filed an answer on behalf of the County. 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 25, 2021.

[1] Ind. Code § 5-14-3-1–10.

BACKGROUND

This case involves a dispute over the timeliness of an agency's response to a public records request.

On July 21, 2021, John Enrietto (Complainant) filed two public records requests with Whitley County, the first sought the following:

> 1) All email correspondence and phone logs between Nathan Bilger and Plan Next employees Brian Ashworth and/or Sara Kelly during the time period 8/1/20 through 7/21/21
> 2) All email correspondence and phone logs between Mark Cullnane, Brian Ashworth and/or Sara Kelly for the time period 8/1/20 through 7/21/21

The second request sought the following:

> On about Feb 4, 2021, beginning at approx. 2:00 in the afternoon, Nathan Bilger held a meeting of the circulation/transportation Task Force. During this meeting, Nathan took notes, and re-read several of these notes back to the group. I am requesting copies of all the written notes and any audio or video recordings of the meeting.

On July 26, 2021, the Whitley County Planning and Building Department acknowledged Enrietto's requests, informing him via letter that the agency was working to identify any potentially responsive records and would have a response by August 21, 2021. After hearing nothing further, Enrietto filed his complaint on August 25, 2021. Enrietto argues the County failed to produce public records within a

reasonable time as required by the Access to Public Records Act (APRA).

On September 14, 2021, Whitley County filed a response denying Enrietto's claim of an APRA violation.

Whitley County argues that it responded to Enrietto with records responsive to his second request on August 25, 2021. Additionally, the County contends that it provided Enrietto a letter stating that the department does not keep phone logs, and the department was still reviewing emails to determine which, if any, were responsive and disclosable.

Whitley County asserts that Enrietto's first request generated approximately 1.7 gigabytes of potentially responsive data, which results in about 170,000 pages of emails that need to be reviewed by legal counsel before any material can be disclosed. The County contends that based on the large volume of documents that need reviewed, it has not taken an unreasonable amount of time to address Enrietto's request; and therefore, no violation has occurred.

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. Whitley County 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 county's public

records during regular business hours. Ind. Code § 5-14-3-3(a).

Indeed, APRA contains mandatory exemptions and discretionary exceptions to the general rule of disclosure. *See* Ind. Code § 5-14-3-4(a) to -(b).

2. Reasonable particularity

Under APRA, all requests for public records must identify with reasonable particularity the records being requested. Ind. Code § 5-14-3-3(a)(1).

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 Dept.*,[2] which involved a dispute over daily police incident reports, 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." 973 N.E.2d at 34.

The second case specifically addressed requests for emails and the sufficiency of search parameters. *See Anderson v. Huntington County Bd. of Com'rs*, 983 N.E.2d 613 (Ind. Ct. App. 2013).

In *Anderson*, the court concluded that a records request for emails sent to or from four county employees was not "reasonably particular" as required by APRA. In that case, an employee spent ten hours and purchased new software in an effort to fulfill the request, which ultimately totaled 9500

[2] 973 N.E.2d 30 (Ind. Ct. App. 2012).

emails, and the emails then had to be turned over to the human resources department for redaction. In *Anderson*, the court essentially ratified a 2012 opinion of this office addressing the same dispute.

Since that time, this office as continued to develop the standard for what is a reasonably particular request for email messages.

> 1. Sender;
>
> 2. Recipient;
>
> 3. Reasonable timeframe (e.g., six months or less); and
>
> 4. Particularized subject matter or set of search terms.

This office has built on those search parameters within the "channels" of communication with factors including a time frame suggestion of six months or less, and a subject matter or key word list to give the agency an idea how to search.

Here, the request in question includes senders and recipients. Even so, the timeframe is nearly a year long and there is no subject matter or key words.

Since the agency did not challenge the particularity of the request, this office will not belabor the point. Even so, the reasonable particularity standard is there to avoid sifting through what Whitley County contends is 1.7 gigs of email messages.

3. Reasonable time

APRA requires a public agency to provide public records to a requester within a reasonable time after receiving a request. *See* Ind. Code § 5-14-3-3(b). Notably, APRA does not define reasonable time.

Determining what is a reasonable time for production of public records depends on the records requested and circumstances surrounding the request.

Undoubtedly, certain types of records are easier than others to produce, review, and disclose. As a result, this office evaluates these issues case by case

This office has long recognized that certain factors are relevant in evaluating whether an agency is following APRA's reasonable time standard. These factors include but are not limited to the following: (1) the size of the public agency; (2) the size of the request; (3) the number of pending requests; (4) the complexity of the request; and (5) any other operational considerations that may reasonably affect the public records process.

Here, Whitley County argues that it was within APRA's reasonable time standard because Enrietto's request generated a large volume of records to review before release.

This office agrees.

Reasonable time is often predicated upon the complexity and volume of the underlying request. The time it takes to

produce the documents is directly commensurate with number of records to curate. It appears that any denial in this instance was the fallout from the request itself.

CONCLUSION

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

Luke H. Britt
Public Access Counselor