

**OPINION OF THE PUBLIC ACCESS COUNSELOR**

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GARY W. MOODY  
*Complainant,*

v.

OFFICE OF STATE SEN. AARON FREEMAN  
*Respondent.*

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Formal Complaint No.  
21-FC-21

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Luke H. Britt  
Public Access Counselor

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BRITT, opinion of the counselor:

This advisory opinion is in response to a formal complaint alleging the Office of State Senator Aaron Freeman violated the Access to Public Records Act.<sup>1</sup> Senator Freeman filed an answer on behalf of his 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 17, 2021.

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<sup>1</sup> Ind. Code § 5-14-3-1-10.

## **BACKGROUND**

This case involves a dispute over access to District 32 State Senator Aaron Freeman’s Twitter account. Gary Moody (Complainant) asserts that he was wrongfully blocked from viewing Senator Freeman’s Twitter feed. As a result, Moody filed a formal complaint with this office on February 17, 2021. Moody argues that Senator Freeman’s violated the Access to Public Records Act (APRA) by blocking him.

Senator Freeman filed a response rejecting Moody’s claim of noncompliance with APRA. He argues that the Twitter account in question is a personal social media account; and thus, is not subject to APRA. Senator Freeman maintains that he only uses the Twitter account for personal matters and campaign materials, and he blocked Moody for personal or political reasons.

## **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 Indiana State Senate is a public agency for purposes of APRA; and therefore its members are subject to the law’s 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 Senate’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)—(b).

## 2. Social media and APRA

Under APRA, the definition of public record includes:

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). As agents of the Indiana General Assembly, members of the State Senate or House of Representatives can individually create public records when acting in their official capacities as legislators. *See Citizens Action Coalition v. Koch*, 51 N.E.3d 236, 242 (Ind. 2016). Specifically, in *Koch*, the Indiana Supreme Court observed: “In fact, the explicit exception within APRA for the work product of individual members and the partisan staffs of the general assembly clearly contemplates APRA’s application to the General Assembly and its members.” *Id.*

While social media is not explicitly referenced in APRA, this office considers social media material to potentially be covered by the definition of public record.

Notably, however, a public official must create the documentation in the scope of their official capacity. This office was clear that there should be a separation between official records and those created in a personal or political

capacity. *See Informal Opinion of the Public Access Counselor 18-INF-08 (2018).*

As part of its investigation, this office reviewed Senator Freeman's Twitter account and it does not appear as if it was created in his official capacity as state senator but was intended to be of a personal or political nature. His bio links to his campaign website as opposed to the Indiana General Assembly. His somewhat infrequent tweets are indeed political or personal but are not substantive legislative activities.

Some public officials' social media accounts are public business because the creator of those accounts hold them out to be part of their public business activities. It does not appear as if Senator Freeman's is one of those accounts.

## CONCLUSION

Based on the foregoing, it is the opinion of this office that Senator Aaron Freeman did not violate the Access to Public Records Act. The social media account in question is not public record. Thus, this office lacks jurisdiction to address the blocking of the complainant.



Luke H. Britt  
Public Access Counselor