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**OPINION OF THE PUBLIC ACCESS COUNSELOR**

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CHRISTIAN J. SHECKLER,  
*Complainant,*

v.

ST. JOSEPH COUNTY COUNCIL,  
*Respondent.*

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Formal Complaint No.  
22-FC-13

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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 St. Joseph County Council violated the Access to Public Records Act.<sup>1</sup> Attorney Michael Trippel filed an answer on behalf of the council. 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 January 27, 2022.

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<sup>1</sup> Ind. Code § 5-14-3-1-10.

## BACKGROUND

This case involves a dispute about whether a public official's text messages and emails, which are maintained on private (i.e., nongovernmental) accounts and devices, are disclosable public records under the Access to Public Records Act (APRA).

On November 17, 2021, Christian Sheckler (Complainant), a reporter with the *South Bend Tribune*, submitted a public records request to the St. Joseph County Council (Council) seeking the following:

1. All records generated by the County and outside consultants, including Ice Miller LLP, related to the 2021/2022 county redistricting process, including but not limited to emails between the consultants and/or between the consultants and council members, memoranda, reports, draft plans, analysis of proposed redistricting plans, notes, descriptions of services rendered, and documentation of directives/instructions used by the council/consultants in forming redistricting plans.
2. All emails and/or text messages sent and/or received by one or more of: 1. Joe Canarecci, 2. Mark Catanzarite, 3. Diana Hess, 4. Bobby Kruszynski, 5. Rafael Morton, 6. Corey Noland, 7. Richard Pfeil, 8. Mark Root, and 9. Mark Telloyan, related to St. Joe County redistricting, including messages sent/received by public email/phones and those sent/received by "personal" email/phones. Please note that this request is distinct from my pending request from September regarding council emails.

On January 14, 2022, the Council responded to Sheckler's request, providing him with some, but not all, of the requested records. Some council members refused stating there is no legal authority requiring the disclosure of emails and text messages from personal devices.

For its part, the Council acknowledges that text messages and emails from private accounts regarding public business are potentially public records and subject to disclosure under the Access to Public Records Act. It argues that it provided all disclosable messages to Sheckler, which fulfills the request.

## 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 St. Joseph County Council (Council) 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 Council'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. Public business on private devices**

Every so often, this office is interested in emphasizing an important element of best practices when public access intersects with good governance. It has been some time since an opinion from this office explored the issue of public records and private email, but March 2022 is as good a time as ever to reiterate the position.

Sheckler's request conspicuously included a request to search the private email accounts of the authors of the messages. While it appears the Council ultimately produced the records, some council members bristled at the notion, claiming the law does not require scrutiny of emails sent using private accounts.

This position is antithetical to this office's historical guidance. While the Council as a monolithic organization may not have access to its members' private email accounts, the council members using private email for public business do. If a public official or employee chooses to use private email for public business—therefore acting as an agent of the municipality or county—then those messages are to be treated as if they were public record on a municipal server. They should be retained in the good stewardship of the individual, even if they are never requested or if they fall into a non-disclosable category.

APRA's definition of public record does not exclude records that would otherwise qualify as a public document exclusively based their location. It's the message, not the medium.

The Council members initially appeared to be dismissive of this conclusion. The “legal authority” sought by individual council members is APRA’s definition of public record:

“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 § 5-14-3-4(r). Individual members are not a public agency in and of themselves, but they are acting as agents of the government when performing official duties. Again, the medium is not the focus, but the message most certainly is. To interpret otherwise would be to create a gaping loophole by which public officials could simply use Gmail or something similar to conduct the entirety of the public’s business and the public would never be any the wiser.

While the members’ private emails about their personal lives are not subject to APRA, messages germane to official capacities as county representatives are the public’s business.

## CONCLUSION

Based on the foregoing, it is the opinion of this office that the St. Joseph County Council should consider messages regarding public business to be public record whether they are sent via official accounts or personal ones.

A handwritten signature in black ink, appearing to read 'LHB', is positioned above the printed name.

Luke H. Britt  
Public Access Counselor

Issued: March 7, 2022