
OPINION OF THE PUBLIC ACCESS COUNSELOR

JEFFREY S. GOENS AND ALAN HUX,
Complainants,

v.

CITY OF CARMEL,
Respondent.

Formal Complaint No.
22-FC-142 & 155 (consolidated)

Luke H. Britt
Public Access Counselor

BRITT, opinion of the counselor:

This advisory opinion is in response to a formal complaint alleging that the City of Carmel violated the Access to Public Records Act.¹ Attorney Allison Lynch-McGrath filed an answer on behalf of the city. In accordance with Indiana Code § 5-14-5-10, I issue the following opinion to the formal complaints received by the Office of the Public Access Counselor on October 4, 2022, and November 3, 2022.

¹ Ind. Code § 5-14-3-1-10.

BACKGROUND

This case involves a dispute about whether the City of Carmel (City) violated the Access to Public Records Act (APRA) by denying a request for records on grounds that it was not reasonably particular.

On August 12, 2022, Jeffrey Goens (Complainant) submitted a public records request via the City of Carmel's Request for Information portal, which sought the following:

Any and all records regarding or concerning any application or proposal for the installation of a cell tower or other wireless facility on or adjacent to the Brookshire Golf Course in Carmel, Indiana. Date range requested: 8/1/2019 – 8/1/2022.

On September 1, 2022, the City denied the request arguing that it did not identify with reasonable particularity the records being requested. Furthermore, the City labeled Goens' request a "fishing expedition."

Hux's request was nearly identical except he requested ten years' worth of records. His request was denied on October 5, 2022.

On September 16, 2022, Goens filed a formal complaint with this office alleging that the City violated APRA because it wrongfully claimed his request was not reasonably particular and refused to disclose public records. Hux filed a substantially similar complaint on November 3, 2022. This office consolidated for efficiency's sake.

On October 24, 2022, the City filed a response through attorney Allison Lynch-McGrath. The City insists that the

request was not reasonably particular and that it was right to deny it. Specifically, the request failed to provide the agency with information that enables it to search for, locate, and retrieve records.

Moreover, the request does not specify the types of records that are being sought nor does the date range provided in the request, three years, serve as reasonable parameters for a search.

In sum, the City asserts that based on the information provided by the complainants, it would not have been able to perform a proper search and or fulfill the requests.

ANALYSIS

1. The Access to Public Records Act (“APRA”)

It is the public policy of the State of Indiana that all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees. Ind. Code § 5-14-3-1. Further, 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.” *Id.*

The City of Carmel (City) 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 City’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. The requests and reasonable particularity

Both Goens' and Hux's requests involve the same subject matter and "any and all" documentation germane to identified cell tower installations for a period of years.

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.

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

² 973 N.E.2d 30 (Ind. Ct. App. 2012).

Both cases implicitly project an element of practicality on the access laws, and rightfully so.

A core duty of public agencies is to provide constituents with information they seek, however, there is an initial burden on a requester to craft a public records request with enough information to give the agency a foothold in the initiation of a search. This ensures an agency is not overwhelmed by unclear or ambiguous requests and are not sent on a wild goose chase tracking down records which may or may not be responsive to the request.

Therefore, while it is recognized that Goen's and Hux's requests could potentially lack reasonable particularity, this office is more interested in finding a solution for both parties.

Dismissing a request as a "fishing expedition" and denying it outright is not always an appropriate course of action. While it is unclear what history the complainants have with the City, no information has been provided suggesting they are vexatious or serial public request filers.

It is true that "any and all" is a red flag when it comes to documentation, it is also unrealistic to expect a constituent to know exactly how records are stored and in what form. The denial gives no indication as to how the two requests could be reworded to find a mutually beneficial result.

Instead of a denial, agencies should consider inviting a requester to resubmit with search parameters allowing the agency to commence a search. This invitation may or may not also be accompanied by suggestions as to how to do so. This is not to say agencies must hand-hold and micro-manage each and every request, but it is good customer service

to provide *something*. This is also consistent with the spirit of the APRA.

It is unlikely that all the information requested is neatly contained in a single file or folder. The requests do indeed need to be massaged to find a manageable course of action. But denying them in a glib and perfunctory manner serves no one.

CONCLUSION

Based on the foregoing, it is the opinion of this office that the City of Carmel should not be so dismissive of public records requests due to their initial imprecise nature. Rather, it should work with requesters to find a compromise so that a practical search can commence.



Luke H. Britt
Public Access Counselor

Issued: January 18, 2023