OPINION OF THE PUBLIC ACCESS COUNSELOR

CHARLES F. MILLER,
Complainant,

v.

INDY PARKS AND RECREATION,
Respondent.

Formal Complaint No.
22-FC-*42*

Luke H. Britt
Public Access Counselor

BRITT, opinion of the counselor:

This advisory opinion is in response to a formal complaint alleging the Indy Parks and Recreation Department (Indy Parks) violated the Access to Public Records Act.[1] Ms. Ronnetta Spalding of the Office of Corporation Counsel filed an answer on behalf of the Department. In accordance with Indiana Code § 5-14-5-10, I issue the following opinion to

[1] Ind. Code § 5-14-3-1–10.

the formal complaint received by the Office of the Public Access Counselor on March 16, 2022.

BACKGROUND

This case involves a dispute about whether Indy Parks took an unreasonable amount of time to respond to a public records request in violation of the Access to Public Records Act (APRA).

On October 27, 2021, Charles Miller (Complainant) filed a public records request with Indy Parks seeking the following:

> All emails, sent between 7/1/2010 – 12/31/2010 and including one or more of the following senders [fifteen named individuals] and including the following keywords: Ellenberger, Catholic, CYO, Ritter, Pleasant Run, St. Clair, turf, Citizens, Dig Indy, Grass, Irvington, Irvington Development Organization, IDO, Banning.

Indy Parks acknowledged the request the next day.

After meeting with Indy Parks in December 2021, Miller tabled his request but then resurrected it shortly thereafter. His complaint was received by this office on March 16, 2022.

For its part, Indy Parks cites the typical guidance from this office regarding search parameters for email requests which will be discussed below. Even still, it planned to have the documents to Miller in mid-to-late April 2022. As of the time of this writing, neither party has provided a status update.

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. Indy Parks and Recreation (Indy Parks) 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 Indy Park'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. Miller's request & reasonable particularity

Miller seeks a set of emails that may or may not exist. Indeed, this office has been quite vocal regarding requests for emails and the specificity required for a sound public records request. Moreover, the retention schedule for county and local government sets a three-year benchmark for keeping emails.[2]

Simply put, Miller omitted critical search parameters from his request; neither a named sender nor a named recipient closed the loop on any particular channel of communication. Also, fifteen individuals were listed as senders, well above

[2] https://www.in.gov/iara/files/county_general.pdf at GEN 10-04.

the usual 4-6 that this office recommends. This lack of reasonable particularity should have caused Indy Parks to solicit an amended request instead of several months of non-production.

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.*,[3] 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.

In *Anderson*, the court concluded that a records request seeking 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 emails, and the emails then had to be turned over to the human resources department for redaction. In *Anderson*, the

[3] 973 N.E.2d 30 (Ind. Ct. App. 2012).

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.

APRA's reasonable particularity standard is there to avoid sifting through what Indy Parks claims is (and appears to be) an open-ended request.

The better practice would have been for Indy Parks to further engage Miller in the beginning, asking him to pare down the scope of his request to a manageable degree. Instead, he was left to wait several months until he felt he had no option but to file his complaint, and rightfully so.

While neither side is blameless in this dispute, Miller should have been granted the courtesy of a second bite at the request apple shortly after he submitted his query, even

though the current one had already been revised. Going forward, Indy Parks should be mindful of saving requesters' time as well as its own.

CONCLUSION

Based on the foregoing, it is the opinion of this office that the Indy Parks and Recreation Department should have invited Miller to narrow the scope of his initial request even more so instead of waiting several months to call out the unspecific nature of his request. Nevertheless, this office is hopeful that the records have now been provided pursuant to Indy Parks' response.

Luke H. Britt
Public Access Counselor

Issued: April 26, 2022