
OPINION OF THE PUBLIC ACCESS COUNSELOR

JEFFREY A. SLAVEN,
Complainant,

v.

TOWN OF ST. JOHN,
Respondent.

Formal Complaint No.
22-FC-7

Luke H. Britt
Public Access Counselor

BRITT, opinion of the counselor:

This advisory opinion is in response to a formal complaint alleging the Town of St. John violated the Access to Public Records Act.¹ Attorney David Westland filed an answer on behalf of the town. 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 14, 2022.

¹ Ind. Code § 5-14-3-1-10.

BACKGROUND

This case involves a dispute over access to records of a town council social media page and questions regarding the responsibilities of the administrators of that page.

On January 13, 2022, Jeffrey Slaven (Complainant), filed a public records request with the Town of St. John seeking the following:

1. The names of all the St. John Administrators from the Town of St. John Council Facebook page; and
2. The complete edit and deletion history of the Town of St. John Council Facebook page from the dates April 21, 2021, to current.

That same day, then-town Manager, Christopher Salatas, responded to Slaven's request, informing him that the St. John Town Council Facebook page was not operated by the Town of St. John employees or staff.

On January 13, 2022, Slaven filed a formal complaint against St. John alleging a violation of the Access to Public Records Act (APRA). Slaven argues the town violated APRA by failing to provide the requested information regarding a social media page, which he believes to be public.

On February 9, 2022, the Town responded to Slaven's complaint, arguing that the Facebook page in question is not operated by any of the Town's employees or staff. Still, the Town appears to understand why Slaven assumed the Town operated the page and provided the following items: (1) the page settings for the St. John Town Council Facebook page listing the administrators; and (2) the entire history of posts for the St. John Town Council Facebook page.

Furthermore, the Town attorney reported that he had contacted the administrators of the page who claimed to have made a diligent search for the edit and deletion history as requested and were unable to find any responsive materials.

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 Town of Saint John 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 Town’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. 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 Saint John Town Council, members of the council can individually create public records when acting in their official capacities as public officials.

In *Citizens Action Coalition v. Koch*, 51 N.E.3d 236, (Ind. 2016), the Indiana Supreme Court concluded that APRA applies to the General Assembly and its individual members. The same is true with town council members.

While social media is not explicitly referenced in APRA, this office considers social media material to be covered by the definition of public record. Notably, however, for a post, tweet, picture, or page to be considered a public record, a public official must create the documentation in the scope of their official capacity. This office has acknowledged that there should be a separation between official records and those created in a personal or political capacity.²

Here, it appears the page is administered by at least one Town councilor, Gerald Swets. To that end, the Facebook page is a public record. It follows that all activity on the page is as well. Additionally, it appears that Slaven received all information that currently exists.

While certain items can be considered transitory—such as edits and draft posts—best practice would dictate that an

² See *Informal Opinion of the Public Access Counselor*, 18-INF-08 (2018).

agency keep the history of posts and deletions for the duration of the local retention schedule. That would be three years for general communication.³

³ https://www.in.gov/iara/files/county_general.pdf (GEN 10-04).

CONCLUSION

Based on the foregoing, it is the opinion of this office that the Town of Saint John should consider its Facebook page to be an official public record. Likewise, it should begin to keep a record of all critical activity on the page for the appropriate retention period.



Luke H. Britt
Public Access Counselor

Issued: February 22, 2022