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**OPINION OF THE PUBLIC ACCESS COUNSELOR**

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ROBERT A. SAMUELS,  
*Complainant,*

v.

TOWN OF MOORESVILLE,  
*Respondent.*

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Formal Complaint No.  
22-FC-90

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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 that the Town of Mooresville violated the Access to Public Records Act.<sup>1</sup> Attorney Beth Copeland 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

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<sup>1</sup> Ind. Code § 5-14-3-1-10.

complaint received by the Office of the Public Access Counselor on May 26, 2022.<sup>2</sup>

### **BACKGROUND**

This case involves a dispute about whether the Town of Mooresville (Town) violated the Access to Public Records Act (APRA) by exceeding the law's reasonable time standard for disclosing public records.

From April 22, 2022, to May 20, 2022, Robert Samuels (Complainant) filed five distinct public records requests with the Mooresville Police Department (MPD). Samuels' requests centered around the removal of the former MPD Police Chief, Kevin Julian.

Samuels requested emails, phone logs, text messages between council members and police officers, meeting minutes of the town council and police commission, and internal communication concerning the status of the requests.

Samuels filed a separate formal complaint for each of the five requests. Samuels argues that he did not receive a response from the MPD, and the department has had sufficient time procure the requested records.

On June 17, 2022, attorney Beth Copeland filed a response of behalf of the MPD and the Town of Mooresville. Copeland argues that the number and scope of the requests require more time for each request to be fulfilled. Copeland also acknowledges a lack of response to four requests made

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<sup>2</sup> This opinion consolidates all of Samuels' complaints against the Mooresville Police Department as well as the formal complaint submitted by Braxton T. Hughes on June 1, 2022.

by Samuels; one being submitted on the same day as the submission of the response.<sup>3</sup>

Copeland draws emphasis to the request for emails and other communications concerning Kevin Julian. Copeland specifies that the Town of Mooresville has no information technology department. A total of 6,000 to 7,000 emails were procured through means of an outside vendor. Copeland argues that the Town needs more time due to vetting each email for relevance and possible redactions.<sup>4</sup>

## 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 Town of Mooresville 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-

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<sup>3</sup> Another request made on June 15, 2022, was also the subject of another Formal Complaint by Samuels indicating that his request was not fulfilled. This Formal Complaint was received on June 20, 2022.

<sup>4</sup> A sixth Roberts’ complaint was filed as this matter was pending.

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. Reasonable time**

APRA requires a public agency to provide public records to a requester within a reasonable time after receiving a request. Ind. Code § 5-14-3-3(b). Notably, APRA does not define the term “reasonable time.”

The determination of what is a reasonable time for production depends on the public records requested and circumstances surrounding the request. Undoubtedly, certain types of records are easier than others to produce, review, and disclose. As a result, this office evaluates these issues case by case.

Here, it appears as if the Town has been inundated with public records requests for emails since earlier this year. While we have been made privy to several of those requests, presumably there are more that this office is not aware of. One of the critical factors in timeliness is how many requests are pending. Here, it appears the Town’s backlog is significant, perhaps through no fault of its own.

## **3. Reasonable particularity**

Toward that end, the real crux of this dispute seems to be whether the request by the requesters meets the reasonable particularity standard set by APRA, our courts, and this office. Under APRA, a request for inspection or copying “must identify with reasonable particularity the record being requested.” Ind. Code § 5-14-3-3(a)(1).

Requiring reasonable particularity relieves a public agency from the guesswork of having to anticipate exactly what a requester is seeking. To borrow an idiom from our colleagues at the Hoosier State Press Association, a request should be more like a rifle less like that of a shotgun.

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.* 973 N.E.2d 30 (Ind. Ct. App. 2012), which involved a dispute about daily incident report logs, 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.

The second case specifically addressed emails and the sufficiency of search parameters. See *Anderson v. Huntington County Bd. of Com’rs*, 983 N.E.2d 613 (Ind. Ct. App. 2013). The *Anderson* court essentially ratified a 2012 opinion of the Public Access Counselor pursuant to an underlying formal complaint between the two parties.

In sum, that opinion began an ongoing effort by this office to pare down and identify the necessary factors of a particularized email request. Notably, the Indiana Supreme Court denied transfer in both cases, which indicates the two cases could be read harmoniously.

While this office attempt to set some parameters around a reasonably particular email request, there is no “one size fits all” definition of reasonable particularity. In fact, this office

has previously acknowledged the elements to be “largely context-specific, in that the generality or accuracy of those elements may fluctuate on a case-by-case basis.” See *Opinion of the Public Access Counselor*, 17-INF17 (2017).

Here, specificity does appear to be in play. A request yielding several thousands of emails is a red flag that specificity may be missing. For example, one of the requests simply used a name as a keyword. That may or may not yield responsive results, but it is not a concise and specific search parameter.

Simultaneously submitting multiple public records requests also defeats the purpose of specificity. Even so, the Town accepted some, if not all, of the requests and has indeed produced some records on a piecemeal basis. It has responded that other requests yielded no results.

Given the breadth and volume of these requests, coupled with the Town’s responses, it does not appear the Town acted contrary to any statutory obligation, nor has it run afoul of any practical, good governance considerations.

## CONCLUSION

Based on the foregoing, it is the opinion of the public access counselor that the Town of Mooresville or the Town's police department has not violated the Access to Public Records Act.

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

Luke H. Britt  
Public Access Counselor

Issued: August 17, 2022