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**OPINION OF THE PUBLIC ACCESS COUNSELOR**

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BOB SEGALL (WTHR),  
*Complainant,*

v.

OFFICE OF THE INDIANA ATTORNEY GENERAL,  
*Respondent.*

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Formal Complaint No.  
23-FC-128

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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 Office of the Indiana Attorney General violated the Access to Public Records Act.<sup>1</sup> Chief Counsel William H. Anthony filed an answer on behalf of the agency. 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 December 13, 2023.

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<sup>1</sup> Ind. Code § 5-14-3-1-10.

## **BACKGROUND**

This case involves a dispute over the length of time taken by the Office of the Indiana Attorney General (OAG) to respond to a public records request.

On September 26, 2023, Bob Segall (Complainant), senior investigative reporter for WTHR-TV, submitted a public records request to OAG for documentation relating to material regarding medical privacy complaints. The OAG communications director had suggested there were approximately 68 open complaints against providers or business associates.

After not receiving a response to his records request, Segall requested an update on October 11. At that time, he was advised that the agency was working on producing the records.

On November 3, 2023, Segall received additional communication that his records request was still under review. Around a month later, Segall followed up with the agency again regarding the request. Segall ultimately filed a formal complaint with this office on December 13, 2023.

A day after this office notified OAG of the complaint, the agency responded to Segall's request by producing a single responsive document.

Despite the production of the document, this office continued with the formal complaint process in order to receive a response regarding the issue outlined in the complaint, namely the OAG's response time.

On January 3, 2024, the OAG filed an answer to Segall's complaint.

The OAG asserts that at the time of Segall's request, the agency had 42 pending public records requests ahead of his. The agency contends it addresses requests in the order received. Additionally, OAG indicates it has ten staffers dedicated to handling public records requests, but those staffers have other duties as well.

The OAG states the practical limitations of staff and resources caused the delay of the document, which included a legal analysis of the information to ensure compliance with privacy laws.

## 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 Office of the Attorney General (OAG) 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 OAG'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. Reasonable time**

At issue in this case is whether the OAG adhered to APRA's reasonable time standard.

Under APRA, a public agency is required to provide public records to a requester within a reasonable time after receiving a request. *See* Ind. Code § 5-14-3-3(b). Notably, APRA does not define reasonable time.

Determining what is a reasonable time for production of public records depends on the 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.

This office has long recognized that certain factors are relevant in evaluating whether an agency is following APRA's reasonable time standard. These factors include but are not limited to: (1) the size of the public agency; (2) the size of the request; (3) the number of pending requests; (4) the complexity of the request; and (5) any other operational considerations that may reasonably affect the public records process.

These factors are not absolute but are instead practical considerations that go into the objective standard of what is reasonable. Moreover, those factors are considered based on the totality of the circumstances.

As a result, this office takes the OAG at its word that Segall's request was the latest in the line of many others ahead of him – 42 by its count. We also consider that the

document required at least some legal analysis to determine whether it was disclosable.

While the OAG is not the largest state agency, it is nonetheless staffed with significant resources and talented staff.

This case is distinguishable from a previous complaint against the OAG. *See Opinion of the Public Access Counselor, 21-FC-63 (2021)*. In that case, this office concluded a response time of several months was reasonable based—in part—on the complex nature of the request. Specifically, the volume of the request and the complexity of the search.

The OAG's arguments are well taken, however, the agency has not carried its burden of persuasion that 80 days to complete a single page document request is reasonable under the Access to Public Records Act.

## CONCLUSION

Based on the foregoing, it is the opinion of this office that the Office of the Attorney General did not meet the Access to Public Records Act's reasonable time standard in this case.



Luke H. Britt  
Public Access Counselor

Issued: March 21, 2024