
OPINION OF THE PUBLIC ACCESS COUNSELOR

SEAN FAGAN
Complainant,

v.

LAPORTE COUNTY BOARD OF COMMISSIONERS
Respondent.

Formal Complaint No.
23-FC-30

Luke H. Britt
Public Access Counselor

BRITT, opinion of the counselor:

This advisory opinion is in response to a formal complaint alleging the LaPorte County Board of Commissioners violated the Access to Public Records Act.¹ Attorney Andrew Jones filed an answer on behalf of the board. 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 March 15, 2023.

¹ Ind. Code § 5-14-3-1-10.

BACKGROUND

Since taking office in January, LaPorte County Prosecutor Sean Fagan² (Complainant) has requested access to emails generated during the prior administration related to five former employees including his predecessor.

In LaPorte County, the emails of the prosecutor's office are housed on county servers. The board of county commissioners typically oversees the information technology department, which typically serves other departments of county government. This is true, even if the departments are managed by separately elected officials.

Prosecutor Fagan contends he requires these emails to review details about case management and the operation of prosecutor's office. Nevertheless, the LaPorte County Board of Commissioners (Board) has denied his request for these emails.

This office first learned of this situation in March and considered it as a matter of first impression. Ultimately, this office revised its initial position and recommended the LaPorte County Commissioners release the entirety of the previous prosecutor's emails in an informal opinion issued March 14, 2023. That letter is incorporated by reference.

Notably, the Office of the Attorney General and the Indiana Prosecuting Attorneys Council both reached the conclusion that Prosecutor Fagan should have access to the requested records.

² Fagan took office on January 1, 2023.

Even so, the Board continued to deny Fagan access to requested records. As a result, on March 15, 2023, Prosecutor Fagan filed a formal complaint with this office.

On April 11, 2023, LaPorte County filed an answer with this office disputing Fagan's claims. The county challenges this office's jurisdiction to address this case alleging the dispute is not governed under the Access to Public Records Act (APRA). Notably, LaPorte County colors the dispute as a political matter that should be addressed by a court if the parties cannot resolve the matter.

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. LaPorte County is a public agency for purposes of APRA; and therefore, subject to the law's 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 County's public records during regular business hours. Ind. Code § 5-14-3-3(a).

Notably, APRA contains exemptions and discretionary exceptions to the general rule of disclosure. *See* Ind. Code § 5-14-3-4(a), to -(b).

2. Jurisdiction of the public access counselor

LaPorte County contends this matter should not be analyzed under the Access to Public Records Act (APRA), even though the underlying dispute involves access to public records.

This office's jurisdiction does not start and stop with APRA and the Open Door Law. Instead, the legislature gave this office statutory authority to address "any other state statute or rule governing access to ... public records³" through the formal complaint process.

What is more, the procedural statute governing the formal complaint process is equally clear that a public agency has standing to file a complaint with this office as a party.⁴

Accordingly, this office is comfortable exercising authority over this matter to issue an advisory opinion.

3. Access to a predecessor's records

In a letter issued in March, this office conceded the dispute is not an exclusive APRA issue and cited several applicable statutes in other areas of the Indiana Code, most notably the following:

A public official who has the custody of any records, excluding personal records, shall at the ex-

³ Ind. Code § 5-14-5-6(3).

⁴ Ind. Code § 5-14-5-6: "A person *or a public agency* denied...may file a formal complaint with the counselor under the procedure prescribed by this chapter." (Emphasis added).

piration of the public official's term of office or appointment, deliver to the public official's successor, or to the administration if there is no successor, all materials defined as records by this chapter.

Ind. Code § 5-15-5.1-15(a). This should be the deciding factor in this controversy. While a county executive may exercise stewardship over records on a county server, it is not the gatekeeper of access for a public official with standing under this statute. LaPorte County's response takes swipes at the potential reasons why Prosecutor Fagan may be seeking the records, but the relevant statute is motivation neutral.

County commissioners and county prosecutors are mutually exclusive and independently elected officials. Without authority, one office cannot deny the exercise of a statutory right to the other.

Even the definition of "record" under Indiana Code section 5-15-5.1-1 references ownership of a record by a successor:

"Record" means all documentation of the informational, communicative, or decision making processes of state and local government, its agencies and subdivisions made or received by any agency of state and local government or its employees in connection with the transaction of public business or government functions, which documentation is created, received, retained, maintained, or filed by that agency or local government *or its successors* as evidence of its activities or because of the informational value of the data in the documentation.

(Emphasis added). Despite LaPorte County's assertions, access to public records, be it through APRA or otherwise, is an apolitical issue.

LaPorte County seemingly thumbed its nose at the position of this office and other state officials on this matter before, which may ultimately leave its resolution to the courts in what will likely result in expensive litigation. Nonetheless, without legal authority, LaPorte County's arguments for nondisclosure in this case are unpersuasive in the opinion of this office.

CONCLUSION

Based on the foregoing, it is the opinion of this office that LaPorte County Prosecutor is statutorily entitled to the records he requested. Any other conclusion would be antithetical to the black letter of the law.



Luke H. Britt
Public Access Counselor

Date: May 31, 2023