
OPINION OF THE PUBLIC ACCESS COUNSELOR

JONATHAN L. DALTON,
Complainant,

v.

DEPARTMENT OF NATURAL RESOURCES,
Respondent.

Formal Complaint No.
23-FC-71

Luke H. Britt
Public Access Counselor

BRITT, opinion of the counselor:

This advisory opinion is in response to the formal complaint alleging the Department of Natural Resources violated the Access to Public Records Act.¹ Assistant General Counsel, Joseph V. Basile 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 August 8, 2023.

¹ Ind. Code § 5-14-3-1-10.

BACKGROUND

This case involves a dispute over access to a handwritten complaint filed allegedly filed by a constituent with the Indiana Department of Natural Resources (DNR).

On July 6, 2023, Johnathon L. Dalton (Complainant) submitted a public records request to DNR for all documentation related to two cases involving his and an associate's arrest. One document was not to Dalton's satisfaction as he contends it was not the original record.

After the arrest, on November 8, 2022, Dalton filed a citizen complaint with DNR regarding the arresting officer's conduct. As part of the document production as to his July 6 request, DNR provided Dalton a typed complaint form with Dalton's signature. Dalton asserts the record DNR provided is not the original version he filed. Notably, Dalton has not explicitly indicated how the versions may be different other than one is typed and his was a handwritten submission.

He argues that he is entitled to his original handwritten paperwork; and thus, Dalton filed a formal complaint with this office on August 7, 2023.

DNR maintains that a handwritten copy does not exist. It does not provide an explanation as to why it was converted to a typed version if in fact Dalton submitted it that way.

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 Department of Natural Resources (DNR) 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 DNR’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. Typed vs. handwritten intake reports

This case involves a dispute over Dalton’s access to a handwritten complaint he claims he filed with DNR, which appears to have been subsequently transcribed into a typed version.

The form in question is a citizen complaint regarding a DNR conservation officer who arrested Dalton. It does not appear as if the arrest manifested in charges against him.

Nonetheless, Dalton contends that he filed a handwritten complaint with DNR and requested his original version approximately seven months later.

Although unclear, the most likely answer to this mystery is that the intake officer simply transcribed Dalton's complaint and discarded his handwritten version.

While Dalton has not identified any substantive differences between the versions, the practice of transcribing a citizen complaint and disposing of the original could be potentially problematic. One could make an argument that context, facts, or words were changed to soften the complaint in some way.

This is not to say that this occurred by any means, however, the specter of suspicion has lingered for Dalton due to the lack of the original document he contends he filed with DNR.

In the future, the better course of action when transcribing a handwritten document for clarity is to keep the original for comparison's sake. That way the record keeping process is unimpeachable yet there is still a legible working copy on file.

This office is confident that DNR will heed this guidance going forward.

CONCLUSION

Based on the foregoing, it is the opinion of this office that if a handwritten copy of Dalton's citizen grievance was filed, DNR should have kept a copy on file along with the transcribed typed version. Since the Complainant did not identify a functional difference between the two, we are disinclined to find any substantive violation of the access laws.



Luke H. Britt
Public Access Counselor

Issued: September 19, 2023