
OPINION OF THE PUBLIC ACCESS COUNSELOR

TAMMY L. THEMEL,
Complainant,

v.

INDIANA STATEWIDE INDEPENDENT LIVING
COUNCIL,
Respondent.

Formal Complaint No.
22-FC-133

Luke H. Britt
Public Access Counselor

BRITT, opinion of the counselor:

This advisory opinion is in response to a formal complaint alleging that the Indiana Statewide Independent Living Council violated the Access to Public Records Act¹ and the Open Door Law.² Executive Director Amber O’Haver filed an answer on behalf of the council. In accordance with Indiana Code § 5-14-5-10, I issue the following opinion to the

¹ Ind. Code § 5-14-3-1-10.

² Ind. Code § 5-14-1.5-1-8.

formal complaint received by the Office of the Public Access Counselor on September 21, 2022.

BACKGROUND

This case involves a dispute about whether the Indiana Statewide Independent Living Council (INSILC) violated the Access to Public Records Act (APRA) by improperly denying access to seven separate public records requests. Accusations also involve an improper executive session held by INSILC in violation of the Open Door Law (ODL).

On July 19, 2022, Tammy Themel (Complainant), a member of INSILC, filed seven public records requests with NSILC seeking information relating to the Center for Independent Living (CIL); the appointment of the INSILC attorney; and other internal policy and procedure records.

Themel also contends INSILC denied her entry to an executive session on August 10, 2022. As a result, Themel filed a formal complaint with this office.

INSILC argues Themel's requests were not denied. Instead, INSILC contends it addressed all seven requests on September 21, 2022. As for the executive session, INSILC asserts that the agency's executive committee called the meeting and Themel is not a member of that subgroup.

In the public records response, INSILC addressed the delay citing an extended out-of-office situation of the executive director. Moreover, Themel had hired outside counsel, prompting INSILC to handle the exchange of information in more of a deliberate manner than normal.

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 Indiana Statewide Independent Living Council (INSILC) 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 INSILC’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

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.”

Determining what is a reasonable time for production of records 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, the request is large, but that does not necessarily disqualify it from legitimacy. INSILC—at least initially—decides whether a public records request—or portions of it—lack the specificity required by APRA. Still, INSILC did not argue that Themel’s request failed to meet APRA’s “reasonable particularity” standard.³

Therefore, accepting a request, even of significant magnitude, shifts the burden to the public agency for an efficient, reasonable response under APRA. This office has stated in the past that piecemeal disclosures of larger requests are preferable compared to waiting for the entirety of the records to become available.⁴

Judging by the relative size and complexity of the request, it may have taken a couple of months to ultimately retrieve and disclose all the requested records. The factors INSILC cites are credible although it may behoove the agency to designate another individual to receive and commence work on a records request when the executive director is away for an extended period. The council president or attorney may be good options going forward.

3. Executive sessions

Themel also asserts INSILC improperly excluded her from an executive session. INSILC contends that it was a committee meeting of which Themel is not a member.

³ Ind. Code § 5-14-3-3(a)(1).

⁴ *Opinion of the Public Access Counselor*, 15-FC-88 (2015).

Under the ODL, the term “executive session” means “a meeting from which the public is excluded, except the governing body may admit those persons necessary to carry out its purpose.” Ind. Code § 5-14-1.5-2(f).

The ODL requires public notice of executive sessions to state the subject matter by specific reference to the enumerated instance or instances for which executive sessions may be held under subsection (b). Ind. Code § 5-14-1.5-6.1(d). Subsection (b), of course, lists the specific subject matters that are authorized for an executive session.

As long as the executive session was properly noticed—Themel does not allege as much—executive sessions can be held by committees or other designated off-shoots of a principal governing body. Therefore, only members of the INSILC executive committee would have official standing to attend unless specifically invited.

CONCLUSION

Based on the foregoing, it is the opinion of this office that the Indiana Statewide Independent Living Council did not violate the Open Door Law or the Access to Public Records Act.

Nonetheless, INSILC should be mindful that public records requests warrant heightened attention; and thus, arrangements should be made to handle them when personnel is absent.



Luke H. Britt
Public Access Counselor

Issued: January 10, 2022