
OPINION OF THE PUBLIC ACCESS COUNSELOR

KARA M. KENNEY (WRTV),
Complainant,

v.

HANCOCK COUNTY,
Respondent.

Formal Complaint No.
23-FC-49

Luke H. Britt
Public Access Counselor

BRITT, opinion of the counselor:

This advisory opinion is in response to a formal complaint alleging the Hancock County violated the Access to Public Records Act.¹ Attorney Scott A. Benkie filed an answer on behalf of the county. 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 May 16, 2023.

¹ Ind. Code § 5-14-3-1-10.

BACKGROUND

This case involves a dispute over access to certain personnel records concerning three employees of Hancock County Community Corrections.

On May 10, 2023, Kara M. Kenney (Complainant), investigative reporter for WRTV, emailed a public records request to the acting human resources director for Hancock County requesting the following:

...[T]he following information for:

- (1) Dan Devoy, Tom Smith, and Nicole Raffaelli
- (2) I need their first and last date of employment (if applicable) and their job titles.
- (3) If there have been any suspensions, demotions, or terminations, can you please provide the factual basis for those?

Kenney also cited the public employee personnel file provision in the Access to Public Records Act (APRA) as support for disclosing the requested records.

Hancock County immediately provided dates of employment; however, it responded that due to a pending investigation “we are not able to provide the other requested information.” Kenney followed up with a request for the status of administrative leave, if any, on May 11.

After no updates, on May 16, 2023, Kenney filed a formal complaint against Hancock County alleging the county violated APRA by improperly denying access to some of the records requested.

On June 13, 2023, Hancock County filed an answer to the complaint denying any violation of APRA. The County argues that it provided Kenney with the information required by statute in a timely manner. Specifically, Hancock County asserts that it provided the relevant employees' names and their dates of employment.

Additionally, the county asserts that, after her complaint filing, replied to Kenny, through legal counsel, confirming the three employees initially received letters of reprimand, which satisfied APRA's requirement to disclose final disciplinary information.

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.*

Hancock County 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 county'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. Personnel Records

APRA provides agencies discretion to withhold most of what is in a public employee's personnel file. Ind. Code § 5-14-3-4(b)(8). Nonetheless, there are some notable exceptions to this rule. The following must be provided upon request:

(A) the name, compensation, job title, business address, business telephone number, job description, education and training background, previous work experience, or dates of first and last employment of present or former officers or employees of the agency;

(B) information relating to the status of any formal charges against the employee; and

(C) the factual basis for a disciplinary action in which final action has been taken and that resulted in the employee being suspended, demoted, or discharged.

In this case, Hancock County fell short of APRA's requirements. The law requires a public agency to justify the denial of access to a public record. Here, Kenney requested records with information related to three specific county employees.

Undoubtedly, Hancock County provided certain information from the relevant personnel files (e.g., employee names; hire dates), but did not provide other personnel file information. Indeed, some of the requested records may not exist (e.g., factual basis for certain disciplinary actions). Even so, APRA puts the burden of nondisclosure on

Hancock County, which means the county must explain (or at least say) why a public record has not been disclosed. If a record doesn't exist, so be it. APRA requires a public agency to tell the requester that is the case. Silence is not sufficient to close the door on a request.

While certain information was disclosed after Kenney filed her complaint, the initial response was lacking. In the future, Hancock County would be well served to acknowledge the entirety of a request and not simply ignore portions even if they do not exist.

CONCLUSION

Based on the foregoing, it is the opinion of this office that Hancock County violated the Access to Public Records Act. This office recommends the county adjust its approach consistent with the law and this opinion.



Luke H. Britt
Public Access Counselor

Issued: July 19, 2023