



STATE OF INDIANA

MICHAEL R. PENCE, Governor

**PUBLIC ACCESS COUNSELOR
LUKE H. BRITT**

Indiana Government Center South
402 West Washington Street, Room W470
Indianapolis, Indiana 46204-2745
Telephone: (317)234-0906
Fax: (317)233-3091
1-800-228-6013
www.IN.gov/pac

June 16, 2016

Thomas S. Sparrow
4712 Old Smith Valley Road
Greenwood, Indiana 46143

Re: Formal Complaint 16-FC-109 & 16-FC-10; Alleged Violation of the Access to Public Records Act by the Johnson County Sheriff's Department and Johnson County Attorney and the Franklin City Court, Respectively (Consolidated)

Dear Mr. Sparrow:

This advisory opinion is in response to your formal complaint alleging the Johnson County Sheriff's Department and the Johnson County Attorney (collectively "the County") and the Franklin City Court ("Court") violated the Access to Public Records Act ("APRA"), Indiana Code § 5-14-3-1 et. seq. The County has responded via Ms. Kathleen Hash, Esq., and the Court by Ms. Lynette Gray, Esq. Those response(s) are enclosed for your review. Pursuant to Indiana Code § 5-14-5-10, I issue the following consolidated opinion to your formal complaint received by the Office of the Public Access Counselor on May 11, 2016.

BACKGROUND

Your complaint dated May 10, 2016 alleges the Johnson County Sheriff's Department, the Johnson County Attorney and the Franklin City Court violated the Access to Public Records Act by improperly denying your records request(s).

During the first week of April, you submitted a request for public records between "Sheriff Douglas Cox", "Prosecutor Bradley Cooper", "Judge Kim VanValer", "Attorney Kathleen Hash" and any of their staff and other support officers from March 28-30, 2016. Your request was for all records containing, "Thomas S. Sparrow" or relevant variations and/or the phrase "sovereign citizen."

On April 11, 2016, the County Sheriff's Department responded to your request, rejecting it for lack of reasonable particularity. Other exemptions were provided, including the investigatory records exemption, the interagency deliberative materials exemption and that records containing administrative or technical information which would jeopardize records keeping or security systems.

The Johnson County Attorney also rejected your request on April 11, 2016 as being overly broad and unduly burdensome and noted she did not have access to the correspondence of all County employees your request entailed. The Attorney did conduct a search of her own public records, as well as those of the County Commissioners. She found no public records which met your request.

On June 1, 2016 the County responded to your complaint, reasserting its position your complaint lacked reasonable particularity.

On March 30, 2016 you submitted a request for all public records between, “Sheriff Douglas Cox”, “Prosecutor Bradley Cooper”, “Judge Kim VanValer”, “Attorney Kathleen Hash” and/or their staff and other support officers from March 28-30, 2016. Your request was for all records containing, “Thomas S. Sparrow” or relevant variations and/or the phrase “sovereign citizen.”

On April 12, 2016 the Court responded to your request, rejecting it for lack of reasonable particularity. The Court notes you have been granted access to your Court file.

On May 24, 2016 the Court responded, asserting your complaint lacked reasonable particularity. The Court also cites the exemption for investigatory records and the exemption for a record or a part of which would have a reasonable likelihood of threatening public safety if disclosed to the public. *See Indiana Code § 5-14-3-4(b)(1) and (b)(19).*

ANALYSIS

The public policy of the 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.” *See Indiana Code § 5-14-3-1.* Johnson County is a public agency for the purposes of the APRA. *See Indiana Code § 5-14-3-2(n)(1).* Accordingly, any person has the right to inspect and copy the County’s disclosable public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. *See Indiana Code § 5-14-3-3(a).*

Under Indiana Code 5-14-3-3(a)(1), “a request for inspection or copying must identify with reasonable particularity the record being requested.” Reasonable particularity is not defined under the APRA. If the public agency cannot determine what records to seek, your request is determined to have lack of reasonable particularity. A public agency is not required to fulfill a request which lacks reasonable particularity.

Indiana Courts have addressed “reasonable particularity” on occasions – specifically in terms of email. The Courts have noted the large amount of documents which even a small search can yield. There is nothing wrong with a voluminous request as long it meets common sense standards of specificity. In my experience, email searches start small – with a sender or recipient or two – and branch out from there. My recommendation is that you reign in your search initially and keep going in phases. This saves time for everyone involved as your first few searches may yield the information you are seeking.

In *Informal Opinion 15-INF-26*, I addressed reasonable particularity with emails request. I wrote

I do not believe that requiring a named sender, recipient, date range (preferably six months or less) and a set of key words is so draconian as to be burdensome. This frankly prevents a “fishing expedition” and prevents a requester from casting a wide net to capture a voluminous amount of emails. A requester should have done enough leg work to know the lanes of email traffic between communicators.

While you are requesting “public records” generally and not specifically emails, the principles stated in *15-INF-26* still apply. The mechanism by which the public can access government records is not a guessing game or a process to play “gotcha” by seeking records which may or may not exist.

Your request lacked reasonable particularity. You properly provided a date range and search terms, which were variations of your name. However, your request failed to properly name the sender and recipient. For example your request to the sheriff’s department requested all records sent or received “between the Johnson County Sheriff Department’s employees & staff [and the] Johnson County Government Attorney’s Office employees &/or staff.”

Had you restricted your request to records sent or received by Sheriff Cox, Prosecutor Cooper, Judge VanValer and Ms. Hash, your request would have properly named both senders and receivers. However, your attempt to widen the search beyond government officials to government staff, without knowing the names of those staff members, resulted in a lack of reasonable particularity. I suggest you resubmit your request to the County and restrict your request to the four individuals named above. If, after you receive the records, you discover other communications which may be relevant, you could submit a request for the relevant communications.

The Court has also cited Indiana Code § 5-14-3-4(b)(1) and (b)(19). However, these provisions are inapplicable. Section 5-14-3-4(b)(1) only applies to records maintained by law enforcement, and not to all records received from law enforcement. Further, the Court is not part of the law enforcement agency structure and therefore cannot raise this exemption. Section 5-14-3-4(b)(19) only applies to reasonable likelihood of exposing a vulnerability to a terrorist attack. There is no other public safety exemption within the APRA.

CONCLUSION

Based on the forgoing, it is the Opinion of the Public Access Counselor that Johnson County and the Franklin City Court did not violate the Access to Public Records Act.

Regards,

A handwritten signature in black ink, appearing to read 'LH Britt', written in a cursive style.

Luke H. Britt
Public Access Counselor

Cc: Ms. Kathleen Hash, Esq.; Ms. Lynette Gray, Esq.