
OPINION OF THE PUBLIC ACCESS COUNSELOR

AISHAH HASNIE,
Complainant,

v.

THE INDIANA DEPARTMENT OF HOMELAND
SECURITY

Respondent.

Formal Complaint No.
17-FC-144

Luke H. Britt
Public Access Counselor

BRITT, opinion of the Counselor:

This advisory opinion is in response to the formal complaint alleging the Indiana Department of Homeland Security's Division of Fire and Building Safety ("DHS") violated the Access to Public Records Act ("APRA"). *See* Ind. Code §§ 5-14-3-1-10. 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 June 23, 2017.

BACKGROUND

Ms. Aishah A. Hasnie (“Complainant”), an anchor and reporter for WXIN-TV, filed a formal complaint alleging that DHS, by and through State Fire Marshall James Greeson, violated APRA by failing to respond to a public records request.

On May 18, 2017, the Complainant submitted five individual public records requests to State Fire Marshall Greeson. Each request is related to a 2016 house fire in Flora, Indiana that killed four children. Specifically, the Complainant requested copies of:

- Any reports, documents, transcripts, statements, or notes related to probable cause documents;
- Any testing and/or lab results related to the fire;
- Public records related to autopsy reports;
- Any 911 recordings related to the fire;
- Records of personnel assigned for the last six months to the investigation of the fire. Specifically, records of the investigators assigned to the case and the names of investigators removed from the case at any time.

On May 24, 2017, DHS’s Office of Public Affairs responded to Ms. Hasnie via email. DHS acknowledged that her request had been received, listed the specific requests, and stated that the agency would review the requests to

determine if the agency had records responsive to the requests.

On June 23, 2017, this office received Ms. Hasnie's formal complaint alleging a violation of APRA by DHS's Division of Fire and Building Safety. The Complainant contends that DHS violated APRA by failing to respond to her request. The complaint specifically names State Fire Marshall James Greeson as the official responsible for the denial of her request. On June 27, 2017, this office issued notice of the complaint to DHS via Mr. Greeson.

DHS did not respond to the formal complaint in writing but I did have a telephone conference with DHS legal counsel on August 3, 2017 wherein DHS assured me the records to Complainant were forthcoming within ten days.

ANALYSIS

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 Indiana Department of Homeland Security is a public agency for the purposes of the APRA. Ind. Code § 5-14-3-2(n). So, any person has the right to inspect and copy the Department's disclosable public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. Ind. Code § 5-14-3-3(a).

In general, if the requested record (1) is a public record from a public agency; (2) is not exempt from disclosure; and (3) is identified with reasonable particularity, the public agency cannot deny access to the record under APRA. The term “reasonable particularity” is not defined under the APRA. Even so, if a public agency can determine what record a requestor is seeking, then the request will likely meet the standard for reasonable particularity.

At the heart of this case is the adequacy of DHS’s response to the Complainant’s requests. Thus, my focus here will be what response APRA requires from a public agency upon receiving a public records request.

Under the APRA, if a person sends a public records request by mail, fax, or email the public agency is required to respond within *seven calendar days* of receiving the request. Otherwise, the request has been denied. Notably, APRA requires only a response and not the actual production of the requested records within that time frame.

Here, the Complainant submitted five individual written requests—dated May 18, 2017—to DHS. There is no dispute that DHS responded to the Complainant’s records requests by email on May 24, 2017. Ms. Hasnie submitted a copy of the email she received from DHS with her formal complaint to this office. The DHS email stated that the agency would review the requests and determine if the agency has records responsive to the Complainant’s requests. Therefore, DHS’s email to the complainant satisfies the response required by APRA.

The upshot of DHS’s response is that the Complainant’s records requests have not been denied. Toward that end,

APRA requires that all records be produced in a *reasonable period of time*, based on the facts and circumstances.

DHS has given pledged the responsive non-confidential records will be produced to Complainant by August 13, 2017. Based on my prior experiences with DHS, I have no reason to doubt their assurances. My only recommendation is for periodic status updates if records will take a significant time to compile and produce.

CONCLUSION

Based on the foregoing, it is the Opinion of the Indiana Public Access Counselor the Department of Homeland Security did not violate the Access to public Records Act.



Luke H. Britt

Indiana Public Access Counselor