
OPINION OF THE PUBLIC ACCESS COUNSELOR

RYAN C. MARTIN,
Complainant,

v.

OFFICE OF THE ATTORNEY GENERAL,
Respondent.

Formal Complaint No.
19-FC-2

Luke H. Britt
Public Access Counselor

BRITT, opinion of the Counselor:

This advisory opinion is in response to a formal complaint alleging the Office of the Attorney General (“OAG”) violated the Access to Public Records Act.¹ Chief Deputy Attorney General F. Aaron Negangard filed an answer to the complaint on behalf of the OAG. In accordance with Indiana Code § 5-14-5-10, I issue the following opinion to the formal

¹ Ind. Code §§ 5-14-3-1 to -10

complaint received by the Office of the Public Access Counselor on January 15, 2019.

BACKGROUND

This complaint concerns the release of personal email addresses requested by the media as well as a public agency's partial redaction of information the agency determined to be nonresponsive to the request.

Around July 11, 2018, Ryan Martin, a reporter for the *Indianapolis Star*, submitted a request to the Office of the Attorney General for the following information:

- Correspondence and information pertaining to staff turnover in the Indiana Attorney General's Office;
- Documentation relating to any public resources utilized by Attorney General Curtis Hill or his staff to facilitate his activities, travel or schedule on March 14 and March 15, 2018

After an invitation to narrow its scope, the request was amended on August 6, 2018 seeking:

...any formal or informal memos, reports or other correspondence pertaining to employee turnover; employee retention; employee termination totals and/or employee termination rates from Jan. 1 2017 to July 31, 2018. Please include such documentation circulated among Mr. Hill, Mr. Bramer, Mr. Negangard, Ms. Blackwell and/or whoever held the top human resources position in the office. It's our understanding that three or four people held that position.

Sixty-three (63) records from the OAG were found to be responsive. Of those, nineteen (19) were disclosable - the remainder containing information which could be withheld by statute. Of that batch of documents, personal email addresses of employees were withheld. This is the basis for the first part of the formal complaint.

Martin argues there is no statutory justification for withholding personal email addresses of public employees in an otherwise disclosable email. The OAG appears to acknowledge this in its response and states: "None of this redacted information falls under an Access to Public Records Act exception, so we would provide the information to you if you request it."

Martin subsequently requested the personal email addresses, but the OAG denied the request. The OAG argues it may do so and is not required to provide the addresses in accordance with Indiana Code section 5-14-3-4(b)(10), which allows an agency in its discretion to withhold from disclosure administrative or technical information that would jeopardize a record keeping or security system.

In the second portion of the formal complaint, Martin takes exception to the OAG's redaction of an email, which the agency determined to be nonresponsive, yet was attached to an email chain the office disclosed. The OAG argues that the way the emails are pulled from the OAG server downloads email chains and not necessarily independent emails. Therefore, extraneous or nonresponsive emails would be included with emails that are germane to the request.

ANALYSIS

1. 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 Office of the Attorney General (“OAG”) is a public agency for the purposes of the APRA; and thus, subject to the Act’s requirements. Ind. Code § 5-14-3-2(n). As a result, any person has the right to inspect and copy the OAG’s disclosable public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. *See* Ind. Code § 5-14-3-3(a).

2. Personal Email Addresses

This Office has long cautioned about the use of personal email for public business and its consequences on public records.² While not prohibited, the use of private email for public business invites oft-unforeseen problems down the road when those emails are requested. It is perfectly understandable that a high-ranking public official would not want their personal email addresses given to the media, regardless of whether that address will be published.

Typically when an email is requested from a public agency, the entirety of the email is given, along with metadata such as sender, recipient, date, and subject line. It is conceivable that such metadata, if disclosed, may compromise the under-

² *Opinions of the Public Access Counselor* 14-FC-199; 16-FC-150.

lying sensitive material – maintaining the integrity of deliberations and negotiations, for example. In those cases, this Office can envision justification for redaction. That does not, however, appear to be the case in the current instance and no such argument is made.

Additionally, the OAG denial cites Indiana Code section 5-14-3-4(b)(10) (administrative or technical information that would jeopardize a record keeping or security system) as justification for redacting the email addresses.

The OAG's response to the complaint subsequently submitted, however, does not cite this exception and it is unlikely the General Assembly intended to include private email addresses as critical information of a record keeping or security system as private email addresses are not part of a public agency's IT infrastructure. For further reading, see *City of Elkhart v. Open Government, Inc.*, 683 N.E.2d 622 (Ind. Ct. App. 1997) (public agency telephone numbers are not covered by Ind. Code § 5-14-3-4(b)(10)).

Instead, this Office is inclined to ratify the OAG's initial conclusion that there is no exception to withhold personal email addresses contained in an email.

When using a private email account for public business, a public employee runs the risk of exposure of that personal email address. The Access to Public Records Act does not recognize an expectation of privacy for such information. In any case, a request for a public record contemplates the four corners of a document. This includes all of the content and not just the body of an email, unless another compelling reason can be given.

3. Nonresponsive Emails in a Chain

A critical expectation of a public records request is that it is made with specificity in a concise, reasonably particular manner. By that same token, the response to a well-crafted request should be similarly concise, particular and free from extraneous information or documentation.

This Office is familiar with instances of wholesale “data dumps” in response to a records request with the intention of frustrating the requester with unneeded information.

Therefore, in the name of efficiency, this Office counsels public agencies to only release those documents specifically requested. It appears as if the OAG did exactly that and redacted a portion of an email it considered superfluous. The initial production of documents, as it relates to the body of the requested emails, appears to be appropriate.

After receiving the redacted email, Martin then appended his original request for the redacted message. The OAG denied the request because it did not meet a standard of reasonable particularity.

Curiously, Martin made his request with pinpoint accuracy. There is absolutely no ambiguity as to which email was being sought. The OAG already provided it albeit in redacted form. The purpose of the reasonable particularity requirement – at least as it pertains to the guidance on emails from this Office – is to prevent agencies from embarking on a wild goose chase to track down what a requester may or may not be seeking. In this case, however, the wild goose had already

been found, plucked, and served. There may be several different exemptions to disclosure that would fit, but reasonable particularity is not one of them. The OAG should have provided the email or cited another exemption to disclosure.

CONCLUSION

Based on the foregoing, it is the opinion of the Public Access Counselor that the Office of the Attorney General cannot redact private email addresses embedded in otherwise disclosable public records, nor can it rely on a reasonable particularity argument to withhold a document which has already been retrieved and produced as part of a document request. It may, however, withhold it if another exemption exists.

A handwritten signature in black ink, appearing to read 'LHB', with a long, sweeping underline.

Luke H. Britt
Public Access Counselor