
OPINION OF THE PUBLIC ACCESS COUNSELOR

ELIZABETH C. DePOMPEI,
Complainant,

v.

OFFICE OF THE FLOYD COUNTY PROSECUTING
ATT'Y,
Respondent.

Formal Complaint No.
19-FC-42

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 Floyd County Prosecuting Attorney violated the Access to Public Records Act.¹ Deputy Prosecutor Evan Bardach filed an answer to the complaint on behalf of the agency. In accordance with Indiana Code

¹ Ind. Code §§ 5-14-3-1 to -10

§ 5-14-5-10, I issue the following opinion to the formal complaint received by the Office of the Public Access Counselor on May 30, 2019.

BACKGROUND

Elizabeth C. DePompei (“Complainant”), digital editor for the *News and Tribune*, filed a request for public records with the Floyd County Prosecutor’s Office for data on the number of child pornography and child molestation cases since 2015.

The prosecutor’s office denied the request on grounds that the office does not compile or retain the data DePompei requested.

On May 30, 2019, DePompei filed a formal complaint alleging the prosecutor’s office violated the Access to Public Records Act. DePompei acknowledges that she is unclear whether the office does not have access to the records she requested or merely a policy of nondisclosure. DePompei contends that the agency is obligated to make reasonable efforts to provide the requested data within a reasonable time under the law. She also notes that agency failed to cite an exception to disclosure its denial.

On June 13, 2019, the Floyd County Prosecutor’s office filed an answer to DePompei’s complaint. The agency maintains that it does not keep the records requested by DePompei and it made her aware of that on two occasions. Additionally, the office contends that it has no duty or responsibility to compile data for use outside of the office.

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 says “(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.*

There is no dispute that the Office of the Floyd County Prosecuting Attorney is a public agency for the purposes of the APRA; and thus, subject to the Act’s disclosure requirements. Ind. Code § 5-14-3-2(q)(6). So, unless otherwise provided by statute, any person may inspect and copy the agency’s public records during regular business hours. *See* Ind. Code § 5-14-3-3(a).

Still, APRA contains both mandatory and discretionary exceptions to the general rule of disclosure. *See generally* Ind. Code § 5-14-3-4.

2. DePompei’s Complaint

DePompei alleges the data she requested is public record and the Prosecutor’s Office must make reasonable efforts to provide the requested data. The Prosecutor, on the other hand, argues the records do not exist.

Indeed, a public agency must make reasonable efforts to provide requesters with a copy of all disclosable data contained in an electronic storage systems. Ind. Code § 5-14-3-3(d). This does not mean, however, that an agency needs to extract compilations or lists to create an entirely new public record based on that request.

At the same time, an agency's reasonable efforts could entail some formatting, sorting, or very elementary queueing in order to fulfill a request, but not the creation of a whole new document.

It is the Prosecutor's position that the subject matter requested is not stored in a manner compatible with the request. The office is not obligated to amalgamate such data into a new list. Consequently, if a record does not exist and a request is turned away, it is not a denial per se, and does not require the citation of a statute.

CONCLUSION

Based on the foregoing, it is the opinion of the Public Access Counselor that the Floyd County Prosecutor's Office did not violate the Access to Public Records Act.

A handwritten signature in black ink, appearing to read 'LHB', with a large, sweeping flourish underneath.

Luke H. Britt
Public Access Counselor