

OPINION OF THE PUBLIC ACCESS COUNSELOR

ZACHARY BAIEL,
Complainant,

v.

TIPPECANOE COUNTY CLERK,
Respondent.

Formal Complaint No.
20-FC-12

Luke H. Britt
Public Access Counselor

BRITT, opinion of the Counselor:

This advisory opinion is in response to several formal complaints alleging the Tippecanoe County Clerk of Courts and Board of Elections violated the Access to Public Records Act.¹ Attorney Douglas J. Masson filed a response on behalf of the clerk and the board. In accordance with Indiana Code section 5-14-5-10, I issue the following opinion to the

¹ Ind. Code § 5-14-3-1-10.

formal complaint received by the Office of the Public Access Counselor on January 31, 2020.

BACKGROUND

This case involves a dispute over access to 2019 campaign finance documents in Tippecanoe County.

On January 15, 2020, Zachary Baiel filed a public records request with the county seeking the following:

CFA-4 documents (Pre-Primary, Pre-Election, Annual, Other, and Final/Disbands) for all candidates in the 2019 election in Tippecanoe, including:

- Lafayette City Council, Mayor, and Clerk;
- West Lafayette City Council, Mayor, Clerk, and Judge;
- Battleground Clerk-Treasurer and Council;
- Dayton Clerk-Treasurer and Council

Baiel also noted his preference to receive digital copies of the requested records. Two days later, Tippecanoe County Clerk Julie Roush emailed the following response to Baiel:

This request may encompass filings from approximately 57 candidates and could, therefore, take some time to fulfill. Currently the staff is at capacity, with many other responsibilities that must be completed before answering your request. Our hope is to respond within the next thirty days.

If the request is not complete at that time, we should have a better idea of how long it will take us to compile the remaining documents. Because these documents are mostly provided to and

maintained by us as hard copies, pursuant to IC 5-14-3-8(d) and County Ordinance 2004-02-CL there will be a charge of \$.25 per order plus \$0.05 per page for these documents.

Please advise whether there is a dollar threshold beyond which you would like us to consult with you before making copies. From my understanding, you have already received some of the documents you have requested. Let us know if you would like to remove those from your list.

Baiel followed up with the Clerk the same day offering to arrange a time to inspect the requested records in lieu of his original request for copies.

On January 22, 2020, Clerk Roush emailed Baiel and indicated, in relevant part, that the office would work on the remainder of his request when time permits. The Clerk noted that the office would notify him when he could inspect the reports, which would most likely be after candidate filing ends and petitions are complete.

Over the next week, Baiel and Clerk Roush exchanged emails where Baiel asked to inspect the records himself to alleviate the situation. That did not come to fruition.

As a result, Baiel filed a formal complaint on January 31, 2020, alleging violation of the Access to Public Records Act. Tippecanoe County filed an answer to the complaint on February 14, 2020, disputing Baiel's complaint.

First, the County argues that APRA is not the enforcement mechanism for Indiana Code section 3-9-4-5(a) as evidenced by the dissonance between APRA's "reasonable time" requirement and the Election Title provision.

Second, the county asserts that it provided Baiel with the campaign finance reports within a reasonable time. Specifically, the county contends that it provided the majority of the 400 pages to Baiel within two weeks of the request.

Third, the county contends that Baiel's request lacked reasonable particularity. The county notes that 57 candidates ran for office in the 2019 election cycle and Baiel requesting the entirety at once arguably does not meet the standards of specificity required for a public records request.

Fourth, the county maintains that APRA requires a public agency to regulate any material interference with the discharge of the functions or duties of the agency. The turnaround time in Indiana code 3-9-5-5(a) would have done just that.

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.*

There is no dispute that APRA applies to the Tippecanoe County Clerk and the Board of Elections. *See* Ind. Code § 5-14-3-2(p).

Moreover, this office is not authorized to solely address the Access to Public Records Act and Open Door Law. Indeed various access laws are scattered throughout Indiana code. Toward that end, the Public Access Counselor has the authority to opine on any other state statute or rule governing access to public meetings or public records. See Ind. Code § 5-14-4-3(3).

That intersection is where this controversy lies. Both parties seemingly acknowledge the influence of APRA on the relevant provision of election law, however, they disagree as to how to interpret it.

2. Campaign reports and statements

Indiana Code section 3-9-4-5 provides, in relevant part, the following:

(a) The election division and each county election board shall make the reports and statements filed with them available for public inspection and copying, commencing as soon as practicable but not later than the end of the second business day following the day during which they were received.

(b) The election division and the county election boards shall also permit copying of a report or statement by hand or by duplicating machine, as requested, at the expense of the person and subject to IC 5-14-3-8. Inspection and copying of records contained on the computer system described in section 4(b) of this chapter are subject to IC 5-14-3.

Notably, the deadline for candidates to file their annual reports was January 15, 2020. *See* Ind. Code § 3-9-5-10(a)(1).

Here, Tippecanoe County argues that APRA is not a mechanism for enforcing an election law. Although that point is well-taken, it is the opinion of this office that the two statutes can be read harmoniously. APRA is deferential to other state and federal provisions.

Even though this office derives its authority and jurisdiction through title 5 of the Indiana Code, it regularly scrutinizes all access issues through the lens of APRA and will continue to do so herein.

3. Reasonable time and particularity

APRA requires all requests to be made with reasonable particularity. *See* Ind. Code 5-14-3-3. While there is no hard and fast rule or definition of that specificity, this office has often cautioned against using qualifiers such as “any and all” in a records request.

Here, the search yielded over 400 documents from 57 candidates. It is reasonable to infer that the legislature did not contemplate the 48 hour deadline of Indiana Code section 3-9-4-5 to include everything all at once. It likely would apply to individual candidate information or even small batches, but it is less reasonable to expect the county to stop and gather all of them for immediate access.

In this regard, particularity and timeliness go hand and hand. The lack of particularity takes the request out of the realm of title 3 and puts in into APRA.

For example, if a candidate filed information on January 6—a Monday—and Baiel requested those filings the same day, he would have been entitled to inspect or copy those records by January 8 at the latest. It cannot be so when seeking the

cumulative total of an election cycle. While they all may exist for potential availability, seeking them all at once will require more patience.

This office must construe APRA liberally in favor of transparency,² but also with an eye toward practicality.³ Seasoning interpretations of the access statutes with dashes of common sense makes for a more satisfying meal for everyone.

4. Interference with discharge of regular duties

Buttressing the inference of the pragmatism of the APRA is the provision found at Indiana code section 5-14-3-7, which gives some latitude to agencies to “regulate any material interference with the regular discharge of the functions or duties of the public agency or public employees.”

I often say that public access is an important, nay critical, priority of government but it is not the only priority. Immediate access in this context—the entire batch of candidates—is neither practical nor realistic. While Indiana Code section 5-14-3-7 is not an opportunity for an agency to drag its feet, it gives them cover faced with competing functions. In that regard, taking a reasonable time to compile these records falls squarely within a logical interpretation of the law.

² Ind. Code § 5-14-3-1.

³ *Smith v. State*, 873 N.E.2d 197, 201 (Ind.Ct.App.2007)(observing that “Implicit in Indiana Code § 5-14-3-3 is practicality”).

CONCLUSION

This is a matter of first impression and this office thanks the parties for their insight and thoughtfulness. In this case, Tippecanoe County presents a more compelling argument as to how to interpret the statutes.

Based on the foregoing, it is the opinion of this office that the Tippecanoe County Clerk and Board of Elections did not violate the Access to Public Records Act.

A handwritten signature in black ink, appearing to read 'LH Britt', with a stylized flourish at the end.

Luke H. Britt
Public Access Counselor