
OPINION OF THE PUBLIC ACCESS COUNSELOR

RACHEL BROOKE,
Complainant,

v.

INDIANA DEPARTMENT OF LABOR,
Respondent.

Formal Complaint No.
20-FC-39

Luke H. Britt
Public Access Counselor

BRITT, opinion of the Counselor:

This advisory opinion is in response to a formal complaint alleging the Indiana Department of Labor (“IDOL”) violated the Access to Public Records Act.¹ J. Anthony Hardman, General Counsel for the IDOL, filed an answer to the formal complaint with this office. In accordance with Indiana Code

¹ Ind. Code §§ 5-14-3-1-10.

§ 5-14-5-10, I issue the following opinion to the formal complaint received by the Office of the Public Access Counselor on March 12, 2020.

BACKGROUND

This case involves a dispute over the access to the appointment calendars belonging to public officials.

On December 2, 2019, Rachel Brooke (Complainant) filed a public records request with the IDOL seeking the following:

- a) All agenda, notes and minutes relating to any meetings and calls between Commissioner Ruble and Gov. Holcomb from Sept. 7, 2017 through Nov. 20, 2018
- b) Commissioner Ruble's appointment calendar and phone logs from Sept. 7, 2018 through Nov. 20, 2018
- c) Director Alexander's appointment calendar and phone logs from Sept. 7, 2018 through Nov. 20, 2018
- d) All communications, including work email, personal email, texts, messages on messaging platforms, and memos, between Gov. Holcomb and Commissioner Ruble, from Sept. 7 2017 through Nov. 20, 2018
- e) All communications, including work email, personal email, texts, messages on messaging platforms, and memos, between Commissioner Ruble and any Amazon employees, lobbyists or representatives (including Anya Malkov, Braden Cox, Mark A. Fiore, John McGahren, Michael Laskin, Dustin Spencer, Mike

Stone, anyone with an amazon.com email address, and anyone from Bose Public Affairs Group), from Sept. 7 2017 through Nov. 20, 2018

On February 10, 2020, Mr. Hardman denied parts (b) and (c) of the request. The denial was based on Ind. Code 5-14-3-4(b)(7), which allows public agencies to withhold diaries, journals, or other personal notes serving as the functional equivalent of a diary or a journal. IDOL argues the appointment calendars belonging to Commissioner Ruble and Director Alexander fall in this category.

The Complainant asserts that the IDOL misapplied the APRA exemption, arguing the appointment calendars should not be considered as the functional equivalent of a diary or a journal, because they are “often accessed by multiple different employees and are not always places where officials make personal notes.” Ms. Brooke points to the Court of Appeals case *Journal Gazette v. Board of Trustees of Purdue University*,² which laid out criteria need to apply the journal exception. She argues that unlike her IDOL request, the material being discussed in *Journal Gazette* case fell within the exception because the public official specifically referred to it as a diary or notebook and was the only person who made entries within the journal.

On April 1, 2020, IDOL filed an answer to Brooke’s complaint. For its part, the IDOL maintains its position that the requested appointment calendars be withheld pursuant

² 698 N.E.2d 826 (Ind.Ct.App.1998)

to I.C. 5-14-3-4 (b)(7). IDOL cites *Opinion of the Public Access Counselor 05-FC-152*, as evidence that previous public agencies have been permitted to withhold similar records under this exception.

ANALYSIS

1. The Access to Public Records Act

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 Indiana Department of Labor (IDOL) is a public agency for purposes of APRA; and therefore, subject to its requirements. *See* Ind. Code § 5-14-3-2(q). As a result, unless an exception applies, any person has the right to inspect and copy the IDOL’s public records during regular business hours. Ind. Code § 5-14-3-3(a).

Indeed, APRA contains exceptions—both mandatory and discretionary—to the general rule of disclosure. In particular, APRA prohibits a public agency from disclosing certain records unless access is specifically required by state or federal statute or is ordered by a court under the rules of discovery. *See* Ind. Code § 5-14-3-4(a). In addition, APRA lists other types of public records that may be excepted from disclosure at the discretion of the public agency. *See* Ind. Code § 5-14-3-4(b).

2. Brooke's request

Appointment and calendar logs are not an uncommon request. The denial of these two items are the portion of the request of which Brooke takes exception.

Historically, this office has long considered calendars as falling into Indiana code section 5-14-3-4(b)(7) and continues to advise agencies accordingly. The holding of *Journal Gazette v. Board of Trustees of Purdue University* is not exhaustive and neither is the statutory exemption.

Calendars are not merely a linear timeline of rote dates and appointments; they often contain memos, reminders, notes and internal tickler files. Much of this information can also be categorized as deliberative material, some of which may also be withheld.

While not addressed in IDOL's response, phone logs are not required to be kept by Indiana executive branch agencies as a rule. It is doubtful these exist, but neither is the request reasonably particular.

The public access counselor is aware that this request is pursuant to a newsworthy and potentially politically charged situation. Notably, this office is a non-partisan ombudsman and advisor. Toward that end, it bears mentioning that the most recent guidance given on this topic was directed upon request to the City of South Bend. When fielding a public records request for Mayor Pete Buttigieg's city-centric calendar during his 2019-20 candidacy for the Democratic nomination for the presidency, the very same counsel was given to his legal staff.

Until directed otherwise by the Indiana General Assembly or judiciary, this position will not change.

CONCLUSION

Based on the foregoing, it is the opinion of this office that the Indiana Department of Labor has not violated the Access to Public Records Act.

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

Luke H. Britt
Public Access Counselor