
OPINION OF THE PUBLIC ACCESS COUNSELOR

DURAN KELLER,
Complainant,

v.

MADISON COUNTY SHERIFF'S DEPT.,
Respondent.

Formal Complaint No.
20-FC-87

Luke H. Britt
Public Access Counselor

BRITT, opinion of the Counselor:

This advisory opinion is in response to a formal complaint alleging the Madison County Sheriff's Department violated the Access to Public Records Act.¹ Sheriff Scott Mellinger filed a response to the complaint with this office. In accordance with Indiana Code section 5-14-5-10, I issue the following opinion to the formal complaint received by the Office of the Public Access Counselor on June 29, 2020.

¹ Ind. Code § 5-14-3-1-10.

BACKGROUND

This case involves a dispute over access to records and recordings related to law enforcement activity.

On January 13, 2020, complainant Duran Keller submitted a public records request to the Madison County Sheriff's Department (MCSD) for records associated with law enforcement activity related to a named individual from December 2019.

The MCSD acknowledged that it received Keller's request, but Keller had not received any responsive records when he filed a formal complaint on June 25, 2020.

Madison County Sheriff Scott Mellinger filed a response on behalf of the department. Sheriff Mellinger argues that the public health emergency exhausted the MCSD's resources, which delayed the production of responsive documents. Sheriff Mellinger contends that the MCSD provided Keller the requested records on July 14, 2020.

ANALYSIS

The key issue in this complaint is regarding the timely production of documents after a request is submitted.

1. The Access to Public Records Act

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.

The Access to Public Records Act (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 Madison County Sheriff’s Department is a public agency for the purposes of the APRA; and thus, subject to the law’s disclosure requirements. Ind. Code § 5-14-3-2(q)(6). Therefore, unless otherwise provided by statute, any person may inspect and copy the Sheriff’s public records during regular business hours. *See* Ind. Code § 5-14-3-3(a). Even so, APRA contains both mandatory and discretionary exceptions to the general rule of disclosure. *See* Ind. Code § 5-14-3-4(a)–(b).

This case involves the time in which the document production process should elapse before becoming an unreasonable delay.

2. Reasonable timeliness

Keller argues that the Sheriff’s failure to produce any responsive records within six months of receiving the request is not reasonable for purposes of APRA.

Under APRA, a public agency may not deny or interfere with the exercise of the right for any person to inspect and copy a public agency’s disclosable public records. Ind. Code § 5-14-3-3(a). Toward that end, the law requires an agency within a reasonable time after the request is received to either:

- (1) provide the requested copies to the person making the request; or

(2) allow the person to make copies:

(A) on the agency's equipment; or

(B) on the person's own equipment.

Ind. Code § 5-14-3-3(b)(1)-(2). The term “reasonable time” is not defined by APRA; and thus, it falls to this office to make a determination on a case by case basis when a complaint is filed challenging timeliness.

In doing so, this office considers the following factors:

- (1) the size of the public agency;
- (2) the size of the request;
- (3) the number of pending requests;
- (4) the complexity of the request; and
- (5) any other operational considerations or factor that may reasonably affect the public records process.

At the same time, because Keller’s request was reasonably particular as a predicate, reasonable timeliness is simply defined by this office as practical efficiency. Here, it does not appear that Keller’s request was overly broad or complex. He named an individual and a timeframe. It does not appear the MCSO pushed back on any particularity issues.

An informal benchmark this office observes as a typical reasonable timeframe is approximately 30 days from receipt of a request. This is certainly not a rule, however, most requests should be fulfilled within that timeframe.

It is true that COVID-19 changed the way government and public records operated. That written, the public health

emergency was not declared until March 6 and the shelter in place order March 23, 2020.

All else being equal, that gave ample time for the Sheriff to produce the documents Keller requested. It was certainly not reasonable for the requester to wait a total of six months.

Nevertheless, there is a statute of limitations for filing a complaint with this office of thirty days after a request is denied. An unreasonable delay is considered a denial. The complaint should have been filed around April at the latest for this type of request.

Therefore, for the purposes of Indiana Code 5-14-5-7, the complaint predicated this opinion is untimely, however, it was written to underscore the importance of timely production of documents by public agencies.

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

Luke H. Britt
Public Access Counselor