
OPINION OF THE PUBLIC ACCESS COUNSELOR

LESLIE L. MESSMER

Complainant,

v.

CARMEL CLAY SCHOOLS,

Respondent.

Formal Complaint No.

21-FC-165

Luke H. Britt

Public Access Counselor

BRITT, opinion of the counselor:

This advisory opinion is in response to a formal complaint alleging that Carmel Clay Schools violated the Access to Public Records Act.¹ Attorney Jessica Billingsley filed an answer on behalf of CCS. In accordance with Indiana Code § 5-14-5-10, I issue the following opinion to the formal complaint received by the Office of the Public Access Counselor on October 5, 2021.

¹ Ind. Code § 5-14-3-1-10.

BACKGROUND

This case involves a dispute over access to text and email records sent and received by faculty and staff at Carmel Clay Schools (CCS).

On August 29, 2021, Leslie L. Messmer (Complainant) filed three separate public records requests with CCS. All three requests sought the same records, but from different senders and receivers. Messmer requested the following:

a copy of all text messages and/or emails that occurred between the individuals listed in the table below during the time frame of 04/01/2021 and 8/29/2021 that include anything related to the following subject matter: regarding the 2021 retirement and replacement of Pam Knowles on the Carmel Clay School Board, including potential candidates who may be eligible for or considered for the position.

Each request included a different list of individuals. In the first request, Messmer asked for:

Text and/or Emails To/From Pam Knowles, Dr. Michael Beresford, Layla Spanenberg, Katie Browning, Mike Kerschner, and Louise Jackson.

The second request listed Layla Spanenberg, Dr. Michael Beresford, Katie Browning, Louise Jackson, and Mike Kerschner. The third request named the following individuals: Louise Jackson, Katie Browning, Mike Kerschner, and Dr. Michael Beresford.

CCS acknowledged all three of Messmer's requests within seven days as required by law. On October 5, 2021, Messmer filed a formal complaint with this office arguing that

CCS violated the Access to Public Records Act (APRA) because more than 30 days elapsed, and she had not received a response to any of the requests.

On October 25, 2021, CCS filed an answer to Messmer's complaint denying it violated APRA.

First, CCS rejects Messmer's claims that it has taken an unreasonable amount of time to respond to her request. The school district contends that requests have required more time than usual because of a significant increase in the number of public record requests during 2021-2022 school year. Moreover CCS also points to "unprecedented challenges including: educating students in the midst of a worldwide pandemic; navigating the pressures of polarized communities on a wide range of topics; personnel shortages; and most recently, supply chain issues."

Second, CCS argues that Messmer failed to identify the records she seeks with reasonable particularity. CCS bases this argument, in part, on an opinion² from this office. In the opinion, this office observed that reasonable particularity dictates that requests, especially for email communications, must include a time frame of six months or less, and a subject matter or key word list to give the agency an idea how to search.

CCS asserts that Messmer's requests contain 30 lanes of communication: fifteen email lanes and fifteen text message lanes, which is too many for a request to be reasonable. She argues that simply splitting the request for records into

² *Opinion of the Public Access Counselor, 21-FC-72 (2021).*

three parts is just a way to circumvent the reasonable particularity requirement.

Based on all this information CCS asserts that it did not violate the Access to Public Records Act.

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. Carmel Clay Schools (CCS) 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 CCS’s public records during regular business hours. Ind. Code § 5-14-3-3(a).

Indeed, APRA contains mandatory exemptions and discretionary exceptions to the general rule of disclosure. *See* Ind. Code § 5-14-3-4(a) to -(b).

2. Messmer’s request and reasonable particularity

This office has long grappled with the difficulties surrounding requests for communication records. Arguably, it has been the signature issue of public access during the past decade. The term “reasonable particularity” is not defined by APRA but remains a predicate for a narrowly tailored request.

Toward that end, the courts—as well as this office—have defined the parameters of reasonable particularity for requests seeking documented communication threads and have honed it to a somewhat consistent science. For the purposes of this situation, one of those parameters involves the number of threads or “channels” between senders and recipients.

Searching for texts and emails can be – but not always – a time intensive task. The task for curating those records for production is another matter altogether. Communication must be vetted for information that would otherwise be confidential or subject to discretionary release or withholding.

As a practical standard, a predicate of a reasonably particular request prevents any one constituent from monopolizing the public access process. All comers are entitled to efficient and timely production of documents. Therefore, an overly complex or voluminous request may compromise the public access rights of another. It is not simply a burden on the school, but other parents and community members as well.

This is not to say a requester is not entitled to the records – they are – but breaking down a request in parts into something more manageable is often a win-win for everyone involved.

Toward that end, this office advises requesters to limit communication requests to four to six “channels” at a time. We advise agencies to invite this specificity as well. This is not a draconian measure, but reasonable and practical for efficiency’s sake. It benefits both the agency and the requester.

That does not appear to be the case here. Given the structure of the request, Messmer would be well served to narrow her request. It stands to reason this would yield a timelier production of the document she seeks. This office is certainly available to assist Messmer in doing so going forward.

CONCLUSION

Based on the foregoing, it is the opinion of this office that Carmel Clay Schools has not violated the Access to Public Records Act.

A handwritten signature in black ink, appearing to read 'LH Britt', is positioned above the printed name.

Luke H. Britt
Public Access Counselor