
OPINION OF THE PUBLIC ACCESS COUNSELOR

MICHELLE BALL,
Complainant,

v.

CARMEL CLAY SCHOOLS,
Respondent.

Formal Complaint No.
21-FC-168

Luke H. Britt
Public Access Counselor

BRITT, opinion of the counselor:

This advisory opinion is in response to a formal complaint alleging 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 8 and November 3, 2021.

¹ Ind. Code § 5-14-3-1-10.

BACKGROUND

This case involves a dispute over access to written public comments submitted to a school corporation and access to curriculum records.

The underlying facts do not appear to be disputed.

In May 2021, Carmel Clay Schools (CCS) implemented a policy where community members could submit public comment through an online portal. This was likely due to heightened scrutiny regarding public school activities as well as time and public health and safety restraints facing the school.

On August 13, 2021, Michelle Ball (Complainant) filed a public records request with CCS for all public comments submitted through the new portal in May and most of June 2021. There were over 300 comments during that time period.

After failing to receive the records by October 8, 2021, Ball filed a formal complaint with this office against Carmel Clay Schools.

Additionally, Ball submitted a public records request on August 26, 2021, for the following materials:

...all curriculum and supporting materials for grades 4th - 8th and high school curriculum instruction on human sexuality and/or sexually transmitted diseases, sex education, abstinence. For the avoidance of doubt the information should be all inclusive of materials [sic], handouts, homework, and other related materials.

All lessons and curriculum that support the social emotional learning “SEL” program and CASEL competencies in grades K-12.

CCS responded by explaining that the sexual education materials did not exist for all the grade levels in question, but as for the grades that did, CCS directed Ball to a series of upcoming public forums of which she could attend.

After not receiving the materials by November 3, Ball filed another formal complaint with this office.

For its part, CCS insists it provided Ball with the public comment records on November 10, 2021. CCS claims the volume of the comments justified the delay.

As for the sexual education curriculum and SEL materials, CCS contends the materials are available on Canvas, an online portal where educational documents are posted. Additionally, CCS asserts that it held a series of “preview events” relating to presentations on human sexuality for parents to review curriculum materials.

Ball found this response insufficient and filed her complaint on November 3, 2021, citing the Indiana Attorney General’s “Parents Bill of Rights #2.”

For its part, CCS responded by reiterating that the public comment portion of the request was satisfied. Furthermore, it contends that requests for all curriculum and all materials associated with either human sexuality and social and emotional learning for all grades is not reasonably particular under APRA.

Moreover, CCS contends that Ball's request was not denied per se, but rather it provided options to her in order to satisfy her curiosity.

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 the law's 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 exemptions and discretionary exceptions to the general rule of disclosure. *See* Ind. Code § 5-14-3-4(a) to -(b).

2. Reasonable time

Under APRA, if a request is properly crafted, a requester should expect to receive at least a partial production of documents within a reasonable time. *See* Ind. Code § 5-14-3-3(b).

The term "reasonable time" is not defined by APRA; and thus, it falls to this office to decide on a case-by-case basis when disputes arise challenging an agency's 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 factors that may reasonably affect the public records process.

In this office's experience, schools have not deprioritized public record requests in the face of increased scrutiny over social emotional learning, public safety measures, and other hot topic cultural issues. Arguably, schools across the state have scrambled for ways to make materials more accessible considering the heightened curiosity and attention.

To the extent that Ball's request was delayed for several weeks, it was likely due to factors outside CCS's control. Based on the information provided, there is no indication, that CCS treated Ball in a disparate manner compared to any other requester. As schools find their footing in making documents more readily accessible, this office has every confidence timelier responses will shift back to normalcy as well.

3. Curriculum requests

By a similar token, it has not been reported to this office that schools have shied away from making curriculum materials available. If anything, they have been more proactive in order to demonstrate to parents and the public that materials are acceptable and appropriate for students.

In any event, current legislative proposals notwithstanding, there is no mechanism in Indiana Code for simultaneously auditing the entirety of a school corporation's educational materials. The public access laws simply do not contemplate requests for every document related to a subject matter.

Public records requests should be precise and narrowly tailored. Notably, this position is predicated on state statutes and binding authority and not any other literature created by another public official.

Title 20, Article 30 of the Indiana Code sets “curriculum” for public schools. “Curriculum” is a nebulous term that encompasses a multitude of potential documents. This office agrees 100% with the assertion that the public is entitled to most, if not all, documents related to curriculum. Even so, a request must be written in a succinct way for the specific documents being sought. This approach has benefitted many other constituents seeking similar information.

Schools are indeed implementing procedures to make these materials available even without a request by giving access to programs like Canvas and holding town hall meetings. While this is unlikely to satisfy all constituents, it is hardly anti-transparency.

This guidance from this office has always been—when it comes to large and complex document requests—to start small and scale up based on materials already provided. This not only yields more efficient and relevant results but allows other community members to participate in the process as well.

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