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**OPINION OF THE PUBLIC ACCESS COUNSELOR**

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LAURA DUBISH  
*Complainant,*

v.

LAKE COUNTY HEALTH DEPARTMENT,  
*Respondent.*

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Formal Complaint No.  
21-FC-170

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Luke H. Britt  
Public Access Counselor

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BRITT, opinion of the counselor:

This advisory opinion is in response to a formal complaint alleging the Lake County Health Department violated the Access to Public Records Act.<sup>1</sup> Attorney Tramel Raggs filed an answer on behalf of the department. 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 15, 2021.

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<sup>1</sup> Ind. Code § 5-14-3-1-10.

## BACKGROUND

This case involves a dispute over access to Lake County COVID-19 positivity rates and weekly cases organized by zip code.

On October 1, 2021, Laura Dubish (Complainant) emailed Lake County Health Officer Dr. Chandana Vavilala requesting immediate release of current COVID data by zip code.

Five days later, after not receiving a response, Dubish filed a formal complaint with this office alleging a violation of the Access to Public Records Act (APRA).<sup>2</sup>

On November 15, 2021,<sup>3</sup> the Lake County Health Department (LCHD) filed an answer denying any violation of APRA.

First, LCHD argues at the time of filing her complaint that it had not denied Dubish access to public records. Specifically, LCHD notes that only five days elapsed between Dubish's email and her formal complaint filing, which does not constitute a denial under the law.

LCHD acknowledges that Dubish included correspondence between another party and Dr. Vavilala concerning the same topic, but that person did not allege violations of APRA. LCHD argues that Dubish cannot allege violations of APRA on behalf of a third party.

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<sup>2</sup> Dubish included email correspondence between other Lake County officials concerning zip code specific information. Although Dubish was included on the email chains, she did not submit a request until October 1.

<sup>3</sup> The LCHD requested an extension of time to file a response to Dubish's complaint, which this office granted.

Second, LCHD contends that Dubish is requesting data related to COVID-19 positivity rates and weekly cases broken down by zip code. The agency argues that it does not synthesize or maintain the data in a way that is responsive to Dubish's request.

As a result, LCHD contends that it does not have records responsive to the request and is not required by law to create them.

## 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 Lake County Health Department (LCHD) 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 LCHD'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. Grounds for a formal complaint**

LCHD argues at the time of filing her complaint, Dubish had not been denied access to public records under APRA; and thus, she lacks the statutory grounds under the relevant statute to file a formal complaint with this office.

By statute, a person who alleges a violation of APRA may file either a formal complaint or an informal inquiry with this office. Ind. Code § 5-14-5-6(1).

What is more, Indiana Code sections 5-14-5-7, 9, and 11 establish the formal complaint and advisory opinion procedure for this office. Part of this procedure includes defining what grounds—that is—what reasons are available for filing a formal complaint and receiving an advisory opinion from this office

Specifically, Indiana Code section 5-14-5-6 provides the following reasons for filing a formal complaint:

A person or a public agency denied:

- (1) the right to inspect or copy records under IC 5-14-3;
- (2) the right to attend any public meeting of a public agency in violation of IC 5-14-1.5; or
- (3) any other right conferred by IC 5-14-3 or IC 5-14-1.5 or any other state statute or rule governing access to public meetings or public records; may file a formal complaint with the counselor under the procedure prescribed by this chapter or may make an informal inquiry under IC 5-14-4-10(5).

(Emphasis added). Given that only five days had elapsed between the time of her request and the filing of her complaint, this office cannot say any act by the LCHD was untimely.

While Dubish was not denied any records at the filing of her complaint, the response by LCHD can be reasonably construed as an eventual denial.

### **3. Dubish's request**

Dubish requested COVID-related data from the LCHD broken down by zip code.

The LCHD claims it simply does not have information responsive to the request. Dubish says it does because LCHD has used the data in the past for demonstration purposes in supporting COVID prevention measures.

It appears both can be true at once.

The Lake County Health Department's website links to data sets that would satisfy Dubish's request. From the LCHD website:

The link below includes positive cases in each Zip Code. [https://public.tableau.com/shared/24TFDBWFC?:display\\_count=n&:origin=viz\\_share\\_link](https://public.tableau.com/shared/24TFDBWFC?:display_count=n&:origin=viz_share_link)<sup>4</sup>

All the information Dubish seeks is a click away. Her contention, however, appears to be that since Lake County used to aggregate the data in house, it should be able to do so again.

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<sup>4</sup> <https://lakecountyin.org/departments/health/covid-19-dashboard-c/>

LCHD concedes that it processed the data by zip code in the past – separate from the Indiana Department of Health – but had problems with accuracy and let that initiative lapse in favor of the state numbers.

In a matter of seconds, this office found the Lake County zip codes, its current infection rate based on population, and the raw number of cases. While we did not explore historical data, the current snapshots can be easily found. It is unknown whether the IDOH or another entity populates this data, but it appears to be current and readily available.

While it is certainly conceivable that the LCHD does not aggregate and produce this information on its own, it at least provides a link on its dashboard to the website that does. Indiana law does not require a local health department to amalgamate and synthesize data in any particular manner. It does not appear that the LCHD would have any other responsibility in this concept other than to link to the data repository, which it has.

## CONCLUSION

Based on the foregoing, it is the opinion of this office that the Lake County Health Department 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