
OPINION OF THE PUBLIC ACCESS COUNSELOR

AKILIA MCCAIN

Complainant,

v.

GARY COMMUNITY SCHOOL CORPORATION,

Respondent.

Formal Complaint No.

21-FC-183

Luke H. Britt

Public Access Counselor

BRITT, opinion of the counselor:

This advisory opinion is in response to a formal complaint alleging the Gary Community School Corporation (GCSC) violated the Access to Public Records Act.¹ Attorney Michael Tolbert submitted statement on behalf of GCSC. 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 November 10, 2021.

¹ Ind. Code § 5-14-3-1 to -10.

BACKGROUND

In this case we consider whether the Gary Community School Corporation (GCSC) violated the Access to Public Records Act regarding the production of public records.

On October 7, 2021, Akilia McCain (Complainant), a GCSC board member, filed a public records request with the Gary Community School Corporation seeking the following:

1. GCSC Administration organizational chart with email addresses and telephone numbers;
2. Organizational charts with email addresses and telephone numbers for West Side Leadership Academy (WSLA), Gary Middle School (GMS), Banneker at Marquette, and Bethune Early Childhood Development Center (BECDC);
3. The most recent security plan for the District and the respective schools listed above and the plan(s) that preceded them, if any; and
4. Bid packages received for the demolition of Lew Wallace High School;
5. The comprehensive mental health plan to address the needs of students including, but not limited to wrap-around services for their families.

The next day, McCain received an acknowledgment of her request from the GCSC attorney. On November 10, 2021, McCain filed a formal complaint, alleging a violation of the Access to Public Records Act because 30 days had elapsed, and she had not received a response from the school.

On December 1, 2021, GCSC responded to McCain’s complaint. GCSC argues that since the school corporation was designated a “Distressed Unit” there has been an uptick in public records requests—sometimes daily—all of which take time to process and review thoroughly. Regarding McCain’s formal complaint, Tolbert argues that her filing was premature because only a little over 30 days had passed since she filed her initial request.

Regardless, Tolbert asserts that McCain’s complaint should be dismissed given that she was provided responsive materials on November 23, 2021, save for item 5 of the request and two executive summaries, which were withheld from disclosure pursuant to Indiana Code sections 5-14-3-4(b)(6)(10), (18), (19).²

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 Gary Community School Corporation (GCSC) 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,

² McCain subsequently takes exception to the invocation of the statutes used to withhold the School Health & Security Plan. This was not part of her initial complaint and will not be addressed herein. She has not waived any standing for filing a complaint regarding this but it will not be substantively addressed at this time.

unless an exception applies, any person has the right to inspect and copy GCSC's public records during regular business hours. Ind. Code § 5-14-3-3(a).

3. Reasonable time

APRA requires a public agency to provide public records to a requester within a reasonable time after receiving a request. Ind. Code § 5-14-3-3(b). Notably, APRA does not define "reasonable time."

Here, the parties disagree about whether GCSC complied with APRA's reasonable time standard as it relates to a request for several documents. The determination of what is a reasonable time for production of records depends on the public records requested and circumstances surrounding the request.

Undoubtedly, certain types of records are easier than others to produce, review, and disclose. As a result, this office evaluates these issues case by case. This office has long recognized that certain factors are relevant in evaluating whether an agency is in compliance with APRA's reasonable time standard.

These factors include but are not limited to the following: (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 that may reasonably affect the public records process.

Here, while the request does not appear to be notably complex, GCSC has satisfied its burden of demonstrating that its queue of public records requests is voluminous to a sufficient degree. Some requesters will naturally have to wait

longer if their request is handled in a first-come, first-served manner. We will not make a value judgment here as to whether a board member is warranted priority over other members of the public. GCSC credibly asserts that McCain's request was delayed based upon circumstances outside of its control. This is especially so as she received the majority of the documents shortly after the filing of her complaint, approximately 45 days after her request. Relatively speaking, this is an appropriate amount of time.

CONCLUSION

Based on the foregoing, it is the opinion of this office that the Gary Community School Corporation has not violated the Access to Public Records Act.



Luke H. Britt
Public Access Counselor