
OPINION OF THE PUBLIC ACCESS COUNSELOR

STEVEN T. BROWN,
Complainant,

v.

INDIANAPOLIS HOUSING AGENCY,
Respondent.

Formal Complaint No.
24-FC-32

Luke H. Britt
Public Access Counselor

BRITT, opinion of the counselor:

This advisory opinion is in response to a formal complaint alleging the Indianapolis Housing Agency violated the Access to Public Records Act.¹ Interim Executive Director Greg Stocking filed an answer on behalf of the Agency. 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 April 9, 2024.

¹ Ind. Code § 5-14-3-1-10.

BACKGROUND

In this case, we consider whether inspection records for Housing Voucher Choice properties are confidential.

On March 21, 2024, Mr. Steven T. Brown (Complainant) requested the inspection records for all Housing Voucher Choice properties from the years 2021-2023. Personnel from the press office from the Indianapolis Housing Agency (IHA) responded, initially noting that their database was inoperable, but would be able to respond with greater detail by March 28.

On April 1, Mr. Brown was notified that his request was denied. The IHA cited Exemption 4 of the Freedom of Information Act. Mr. Brown alleged that this his request was wrongfully denied because he requested it under the Access to Public Records Act (APRA), not the Freedom of Information Act (FOIA). In addition, Mr. Brown suggests that redaction is an available option to remove personal information.

Subsequently, Mr. Brown filed a complaint against the IHA, and the IHA responded on May 1, 2024. For its part, the IHA argues that the system is still inoperable, therefore a manual production of documents would be impractical, if not impossible. Furthermore, it clarifies that the FOIA denial was intended to point to APRA section 4. Nonetheless, the IHA does not point to a specific section in APRA or Indiana code that would exempt the material from disclosure.

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 Indianapolis Housing Agency (IHA) is a public agency for the purposes of APRA; and therefore, is subject to 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 IHA’s public records during regular business hours. Ind. Code § 5-14-3-3(a).

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

2. Freedom of Information Act (FOIA)

It is not uncommon for the Freedom of Information Act and the Access to Public Records Act to be confused for each other. FOIA is a statute that generally regulates most public access issues for Federal executive branch agencies, while APRA does the same for all three branches of Indiana government. There is no dispute that Mr. Brown requested public records under APRA. Section 4 of the Access to Public Records Act contains a number of confidentiality provisions and discretionary exemptions to disclosure.

3. Denials

There is no question that some public records are inappropriate for general public disclosure even though the presumption should favor release and transparency.

Nonetheless, APRA contains a multitude of examples of records that can be denied upon request. What is more, however, a denial of a written request (which Brown's was) must include a statement of the specific exemption(s) authorizing the withholding of all or part of the record. See Ind. Code § 5-14-3-9(d).

Here, while IHA concedes its initial denial was based on the wrong statute, it does not provide a specific APRA provision supporting its decision to withhold. Instead, in its response to Brown's formal complaint, IHA cites Indiana code section 5-14-3-4(a) generally. Subsection 4(a) contains 12 specific exemptions to disclosure as well as three exemptions referring broadly to other state and Federal authorities that may or may not apply.

It very well could be that the responsive materials could contain one or more of these exemptions, however, the specificity of what those might be is missing from the denial. Toward that end, even if part of the record contains confidential information, the public agency has an obligation to separate the material that may be disclosed and make it available if the exercise of doing so is practicable.

4. Reasonable Particularity

The concept of reasonable particularity is the lone burden placed on a requester. This simply means that a person seeking public records does so in a manner that identifies a specific document or set of documents. See Ind. Code § 5-14-3-3(a)(1).

There does not seem to be a question that Brown's request was reasonably particular but for the inoperability of IHA's electronic system. Even with voluminous sets of information, an electronic database can typically sort data fields to easily generate responsive material and excise confidential information. Given the downed system, the process appears to now be manual.

Notably, an agency has an affirmative duty to protect public records from loss or destruction and to reasonably organize records to make them available upon request. See Ind. Code § 5-14-3-7(a). It is unknown if IHA is making efforts to repair its system or if it is a lost cause, however, it should be aware that the law also places an affirmative duty on agencies to make reasonable efforts to provide persons access to information in an electronic data storage system pursuant to Indiana code section 5-14-3-3(d).

CONCLUSION

Based on the foregoing, it is the opinion of this office that the Indianapolis Housing Agency should make reasonable efforts to provide the complainant with responsive materials when and if its system comes back online and can separate any confidential information so long as it cites the correct statutes.

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

Luke H. Britt
Public Access Counselor

Issued: July 25, 2024