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## OPINION OF THE PUBLIC ACCESS COUNSELOR

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RON W. BRUMBARGER,  
*Complainant,*

v.

INDIANA CIVIL RIGHTS COMMISSION,  
*Respondent.*

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Formal Complaint No.  
24-FC-36

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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 Indiana Civil Rights Commission violated the Access to Public Records Act.<sup>1</sup> Deputy Director and General Counsel David Fleischhacker filed an answer on behalf of the Commission. In accordance with Indiana Code § 5-

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<sup>1</sup> Ind. Code § 5-14-3-1-10.

14-5-10, I issue the following opinion to the formal complaint received by the Office of the Public Access Counselor on April 30, 2024.

### **BACKGROUND**

In this case we consider whether Mr. Ron W. Brumbarger (Complainant) was wrongfully denied access to a public records request.

On February 5, 2024, Mr. Brumbarger submitted a Public Records Request Form that he'd found for the Indiana Civil Rights Commission (ICRC). He followed up on March 7, but was advised that he needed to use the agency's new public records portal and the previous one was not received. He did so on April 30, 2024.

His request sought complaint information including names, addresses, attorneys, their addresses, types of complaints, and related data.

He was advised that his request did not meet specific requirements and that ICRC would have to create a document to satisfy his request. He was directed to the ICRC website, including annual reports.

On the same day as his second request, April 30, Mr. Brumbarger filed a Formal Complaint with this office, alleging the Indiana Civil Rights Commission (ICRC) was ignoring his request.

For its part, the ICRC maintains that it does not have a record responsive to Brumbarger's request and would need to compile information on a new request to satisfy it.

## 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 Indiana Civil Rights Commission (ICRC) 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 ICRC’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. Submission of the request

First handling the concern of being ignored by Mr. Brumbarger, APRA allows for public agencies to have discretion over the method they have requesters submit their public records requests. *See* Ind. Code § 5-14-3(a)(2). So long as these methods are accessible to the public and uniform amongst all requesters, this is standard and compliant.

In this situation, it appears that Mr. Brumbarger unfortunately first submitted an APRA request through an old form. Although a public agency is burdened with ensuring that they receive all public record requests, this situation

does not appear to purposefully deny the public access and transparency. Additionally, the ICRC intended to expedite the process with the knowledge that Mr. Brumbarger had been waiting, expecting a response for much longer.

Once Mr. Brumbarger had emailed ICRC, they were prompt in their response to rectify the situation. They acknowledged the request within the statutory timeframe and denied the request with the needed statutory reasoning.

### **3. Denial of request**

Ultimately, ICRC denied the request on two grounds: (1) lack of reasonable particularity and (2) a public agency is not required to create or provide copies of lists of names and addresses unless otherwise required to do so by statute.

#### **3.1 Reasonable Particularity**

There are few burdens upon the requester when using APRA. As previously noted, one is if there is a form provided, the requester must use the form. Additionally, the requester must use “reasonable particularity” pursuant to Indiana Code § 5-14-3(a)(1). Notably, “reasonable particularity” has not been statutorily defined; however, over time, this office and the Courts have worked to give more tangible meaning to this term.

Generally speaking, a request will be considered reasonably particular if it seeks an identified document or concise set of documents. While Mr. Brumbarger’s request did appear to be particular, insofar as seeking an identified set of information, whether it is reasonable depends on context.

### **3.2 Creating databases**

To be clear, if ICRC had a database or a docket with all of its complaints in one singular document, it would likely be disclosable. Based on its 2023 annual report, ICRC received 980 complaints alone across a spectrum of subject matters. The numbers ranged between 444 and 791 in the years included in the request.

ICRC notes in its denial that public agencies are not required to create or provide copies of lists of names and addresses unless the agency is required by statute as pursuant to Ind. Code § 5-14-3(f).

To fulfill Brumbarger's request, ICRC would need to catalogue over 2000 distinct complaints by extrapolating the requested information and amalgamating them into a database.

While requesters frequently use public records requests as a mechanism to audit agency programming and operations, simply put, the APRA alone does not place that kind of burden on public agencies.

This office is unaware of any provision preventing the disclosure of individual case information, but unless it is compiled in the manner in which the complainant has asked, ICRC would not be required to create a document to satisfy the request.

## **CONCLUSION**

Based on the foregoing, it is the opinion of this office that the Indiana Civil Rights Commission has not violated the Access to Public Records Act.

A handwritten signature in black ink, appearing to be 'LHB', written in a cursive style.

Luke H. Britt  
Public Access Counselor

Issued: July 30, 2024