
OPINION OF THE PUBLIC ACCESS COUNSELOR

DAVID W. HUTCHINSON,
Complainant,

v.

INDIANA DEPARTMENT OF NATURAL RESOURCES,
Respondent.

Formal Complaint No.
17-FC-168

Luke H. Britt
Public Access Counselor

BRITT, opinion of the Counselor:

This advisory opinion is in response to a formal complaint alleging the Indiana Department of Natural Resources—Fish and Wildlife Division (“DNR”) violated the Access to Public Records Act (“APRA”). Ind. Code §§ 5-14-3-1 to -10. The DNR responded to the complaint via Ms. Samantha DeWester. The agency’s response is enclosed for review. In accordance with Indiana Code section 5-14-5-10, I issue the following opinion to the formal complaint received by the Office of the Public Access Counselor on July 10, 2017.

BACKGROUND

David W. Hutchinson (“Complainant”) filed a formal complaint alleging the DNR violated the APRA by failing to provide records responsive to his public records request.

On April 7, 2017, Hutchinson submitted a public records request to DNR on behalf of the Indiana Whitetail Deer Herd Management Board of Directors. The DNR acknowledged the request on April 13, 2017. Through a series of emails, DNR determined the request to be insufficiently particular. As a result, the Complainant re-submitted the request. Given the quality of the information submitted¹, it is difficult to ascertain exactly what Hutchinson’s current request is, but it appears he seeks the following:²

Email from DFW Director Mark Reiter as author entitled "I don't appreciate this." Sent on DNR electronic mail dated after April 1, 2017 to the present. These would include every department and staff member he sent the email to, including but not limited to Division of Law Enforcement or the DNR Director.

Directive from Division of Law Enforcement Management for CO's not to attend CDACs in the text of the emails after March 1, 2017

¹ Complaint narrative reads as follows: “I have made request for records [sic] and have not recieved [sic] anything as of today nor will the Attorney [sic] and the PAC Counsler [sic] respond back to me. The request are not to broud [sic] as they claim, considering they had no problem sending me 10 years of documents the previous year. Some of which were so large of a file they sent to me in the form of a hard disk.”

² This writer personally invited the Complainant to engage in a call to counsel him on the form and function of the request and/or the complaint on May 10, 2017. That invitation was not accepted.

Emails from Chad Stewart or Jason Wade in reply to Conservation Officers recommendations on deer management. This/these emails, request they no longer send that information to the deer biologist/s at that time. This does increase the scope of our request to include 2009 to the present. This involves both the DNR DFW and DNR DLE.

The DNR contends that an APRA violation has not occurred in this case. The agency maintains that the requests at issue here are still not reasonably particular. Even so, the DNR continues to express its willingness to commence a search once it is clear what the Complainant is seeking.

ANALYSIS

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 Department of Natural Resources is a public agency for the purposes of the APRA. Ind. Code § 5-14-3-2(n). Therefore, any person has the right to inspect and copy the DNR’s disclosable public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. *See* Ind. Code § 5-14-3-3(a). A public agency is required to make a response to a written request that has been mailed within seven days after it is received. Ind. Code § 5-14-3-9(c).

As written, Hutchinson’s request does not meet the standards of specificity contemplated by APRA. The act expressly requires a request for inspection or copying to identify with

reasonable particularity the record being requested. Ind. Code § 5-14-3-3(a)(1).

The subject of requests for email records has been addressed by this office a number of times; and, I will provide that guidance at any time upon request. There are four elements to a *reasonably particular* request for an email message:

- 1. a named sender;**
- 2. a named recipient;**
- 3. a timeframe of six months or less; and**
- 4. a set of search terms or subject matter as a parameter.**

This office contacted the Complainant on May 10, July 10, August 1, and August 17 to no avail. Other than being carbon copied on correspondence, the Complainant has chosen not to engage in the services provided by the Office of the Public Access Counselor.

I am attaching a copy of *Opinion of the Public Access Counselor 17-FC-52* for guidance as to reasonable particularity of email searches; a copy of the PAC's Guide to Filing a Formal Complaint from www.in.gov/pac, and a Handbook on Indiana Public Access Laws that this Office developed. It is my hope in the future that the Complainant will use these tools to craft a reasonably particular request and (if needed) an appropriate complaint.

CONCLUSION

Based on the foregoing, it is the opinion of the Public Access Counselor that the Indiana Department of Natural Resources has not violated the Access to Public Records Act.

A handwritten signature in black ink, appearing to read 'LH Britt', with a stylized flourish at the end.

Luke H. Britt
Public Access Counselor