
OPINION OF THE PUBLIC ACCESS COUNSELOR

JANET A. YANINEK,
Complainant,

v.

DEPT OF ENVIRONMENTAL MANGAGEMENT,
Respondent.

Formal Complaint No.
17-FC-219

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 Environmental Management (“IDEM”) violated the Access to Public Records Act¹ (“APRA”). IDEM responded to the complaint through Deputy General Counsel, Valerie Tachtiris. 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 September 5, 2017.

¹ Ind. Code §§ 5-14-3-1 to -10

BACKGROUND

Janet A. Yaninek (“Complainant”) filed a formal complaint alleging IDEM violated the Access to Public Records Act by failing to provide responsive records within a reasonable time.

On November 14, 2016, Yaninek submitted a public records request to IDEM seeking the following:

All documents related to the Flow Meter at American Suburban Utilities (Inspections, Violation, Compliance, Enforcement) between the years 2000 to present at the Carriage Estates Wastewater Facility

IDEM sent a written acknowledgment of the request by email the same day. On December 15, 2016 Yaninek sent IDEM a follow up email informing the agency that she had not received any records. That same day, IDEM notified Yaninek that it anticipated having the entire packet of responsive records—or at least an update on the progress—by February 15, 2017. After that date came and went, Yaninek sent another email to IDEM in late February seeking an update on the request. The agency responded the same day apologizing for missing the anticipated deadline and indicated the agency was still working on compiling responsive records.

This sort of back-and-forth continued for the next several months. After Yaninek’s status check in early April, IDEM responded and moved the anticipated completion date—or at least a status update—back to June 3, 2017.

Four days after that date passed, Yaninek followed up again, and again IDEM responded with another boilerplate email message apologizing for the delay, but indicated the agency was working to complete the request.

On September 5, 2017—approximately ten months after the original request—Yaninek filed a formal complaint with this office.

Two days later, IDEM responded to Yaninek’s request. The agency included a link to responsive documents in IDEM’s Virtual File Cabinet (VCF). IDEM also denied part of the request—withholding two records—as deliberative material in accordance with Indiana Code section 5-14-3-4(b)(6). Additionally, on September 15, 2017 IDEM sent Yaninek a supplemental response stating its original response was over-inclusive and included many records that were not directly responsive to her request. In the supplemental response, the agency identified six records—from the original response—as particularly relevant to Yaninek’s request, and provided an additional document that was not included before.

IDEM disputes that an APRA violation has occurred in this case. IDEM argues that it never denied Yaninek’s request; and therefore, she lacks sufficient grounds for a formal complaint under Indiana Code section 5-14-5-6. Although IDEM acknowledges that it must fulfill records requests within a reasonable time, the agency notes that APRA does not specify a time for production, and what is reasonable varies on a case-by-case basis. Ultimately, IDEM argues that it responded to Yaninek’s request within a reasonable time as required by APRA.

ANALYSIS

This formal complaint presents an issue of whether IDEM's response time—nearly ten calendar months—constitutes a *reasonable time* as required by 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. IDEM is a public agency for the purposes of the APRA, and subject to its requirements. Ind. Code § 5-14-3-2(n). Therefore, any person has the right to inspect and copy IDEM's disclosable public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. Ind. Code § 5-14-3-3(a). Any request for inspection or copying must identify with *reasonable particularity* the record being requested, and be, at the discretion of the agency, in writing on or in a form provided by the agency. Ind. Code §§ 5-14-3-3(a)(1), -(2).

It is worth noting that IDEM does not argue that the public records request at issue in this case lacked reasonably particularity or otherwise challenge the sufficiency of the request itself. Moreover, the agency expressly states that it did not deny the Yaninek's request. Thus, APRA requires the agency to fulfill the request within a *reasonable time*.

Reasonable Time

Under APRA, a public agency may not deny or interfere with the exercise of the right for any person to inspect and copy a public agency's disclosable public records. Ind. Code § 5-14-3-3(a). Toward that end, within a *reasonable time* after the request is received by the agency, the public agency shall either:

- (1) provide the requested copies to the person making the request; or
- (2) allow the person to make copies:
 - (A) on the agency's equipment; or
 - (B) on the person's own equipment.

In this case, the parties disagree about what constitutes a *reasonable time* as it pertains to the Complainant's request. Notably, the APRA does not specifically define what constitutes a *reasonable time* as it pertains to the production of, or inspection of responsive records. Often, this Office is asked to make a determination as to the reasonableness of the time for production by a public agency. What is a reasonable time period under one circumstance may not be reasonable in another. What is more, the production of responsive records need not materially interfere with the regular discharge of the functions and duties of the public agency. *See* Ind. Code § 5-14-3-7(a).

The determination of what is a reasonable time for production, therefore, depends upon the public records requested

and circumstances surrounding the request. Although reasonable time is not defined in the APRA or by the Courts, it is a standard which differs on a case-by-case basis.

The factors affecting the reasonableness of timely production of documents include but are not limited to:

- The size of the public agency;
- The size of the request;
- The number of pending requests;
- The complexity of the request; and
- Any other operational considerations that may reasonably affect the public records process.

In this case, the formal complaint is dated approximately ten calendar months after the submission of the public records request to IDEM. Additionally, the Complainant sought records from a sixteen year period of time. In my view, IDEM could have—consistent with APRA—asked the Complainant to narrow her request to a more reasonable period of time, or denied the request because it lacked reasonable particularity. Any request for “all documents” relating to a certain subject is generally an indication a request lacks specificity. “All documents” is not a specific record or even a particular set of records. However, as IDEM readily concedes, the agency did not deny the request. As set out *supra*, if a request has not been properly denied, the agency must provide the requested records within a reasonable time.

Undoubtedly IDEM is a large public agency that receives numerous complex public records requests. Even so, it should be a rare occurrence—if ever—that a public records request require ten months to partially fulfill and deny. This is why the sole obligation on the part of a requester is to

narrow a request to meet a practical standard of specificity. The request itself was not reasonably particular as required by APRA. Therefore, IDEM took an unreasonable amount of time to fulfill a request that lacked reasonable particularity. Both parties bear culpability in the delay. While I appreciate IDEM's willingness to bear the burden of such a large request, it invites complaints like these. For practicality's sake, I recommend the agency scrutinize these kinds of requests before committing itself to the production of records.

CONCLUSION

Based on the foregoing it is the opinion of the Public Access Counselor that IDEM violated the Access to Public Records Act because the responsive records were not provided within a reasonable time, however, the delay was exacerbated by a voluminous request for sixteen years' worth of "all documents" related to a subject matter.

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

Luke H. Britt
Public Access Counselor