

OPINION OF THE PUBLIC ACCESS COUNSELOR

KARA KENNEY
Complainant,

v.

CITY OF COLUMBUS
Respondent.

Formal Complaint No.
20-FC-161

Luke H. Britt
Public Access Counselor

BRITT, opinion of the counselor:

This advisory opinion is in response to a formal complaint alleging the City of Columbus violated the Access to Public Records Act.¹ Attorney Alan Whitted, filed an answer on behalf of city. 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 16, 2020.

¹ Ind. Code § 5-14-3-1-10.

BACKGROUND

This case involves a dispute over access to personnel records of the Columbus police department.

On August 27, 2020, Kara Kenny (Complainant), an investigative reporter for WRTV, submitted a public records request to the City of Columbus for the following:

- a) Service Records for 2015, 2016, 2017, and 2018 for the following CPD past/present employees: Steven Long, Wesley Dodge, Daniel Meister and Ronald May
- b) Any additional document(s), other than the Personnel Assignment Registers (PAR), reflecting the hours scheduled and/or worked for 2015, 2016, 2017 and 2018 for the following CPD past/present employees: Steven Long, Wesley Dodge, Daniel Meister and Ronald May
- c) CPD Personnel Assignment Register (PAR) sheets for 2nd shift for [several specific dates in 2017]

The City's attorney responded to Kenney's request by informing her that in regard to item (c), the City does not have records responsive to the request. In her complaint, Kenney argues that the City should be in possession of these records since WRTV obtained copies of the records from another source. As for items (a) and (b), Whitted denied the request, arguing that the request was not reasonably particular. Kenney disagrees with Whitted's assessment of her request and maintains that she was just trying to get

records documenting the hours worked by certain police officers. Furthermore, Kenney complains that Whitted did not suggest how she might narrow my request or provide more information to clarify my question with his denial.

On August 28, 2020, Kenney submitted another public records request for the following:

- a) Documents and any specific reference containing the personnel policies regarding flexible work schedules for FLSA exempt officers, specifically, by flexible work schedules, I refer to a policy or directive allowing employees to vary their arrival and departure times for work without earning or taking compensatory time.
- b) Documents allowing exceptions to the normal work week schedule for any/ all FLSA exempt police officers.

Whitted responded to this request, claiming that it was not reasonably particular. As a result, in an attempt to remedy the problem, Kenney replied by requesting any documents specifically allowing Jon Rohde to work a flexible schedule. Kenney contends that never received a response to her updated request.

On August 31, 2020, Kenney filed a public records request for service records pertaining to Jonathan Rohde. The City fulfilled the request. Shortly after, Kenney reached out to the City Clerk for clarification regarding some of the notations on the records she received. Whitted responded to this request by asking Kenney to submit her request on the City's Public Information Request Form. On September 16, 2020, Kenney did just that. The City issued a denial

because Kenney's request was not an appropriate APRA request.

On December 7, 2020, Whitted filed a formal response to Kenney's complaint with this office. First, according to the response letter, item (c) of Kenney's August 27, 2020, request was denied because the City did not possess the responsive records. This is because those same records had been turned over to the State Board of Accounts prior to Kenney's request, therefore they were not available when the request was made.

As for items (a) and (b) of Kenney's August 27, 2020, request they were denied as not being reasonably particular. Whitted argues that, the City does not maintain or organize its documents and correspondence depending on whether or not they "reflect" certain information. Therefore, it would be unreasonable to expect the City to comb through all of its records for any reference to the information being requested. As for Kenney's assertion that the City failed to respond to her follow-up email, Whitted claims that her email did not make any public records requests.

Regarding her August 28, 2020 request, Whitted defends his actions by explaining that item (a) of the request was satisfied when he directed Kenney to the Columbus Police Department's General Orders, which included the relevant information. Furthermore, for item (b) of that same request, Whitted claims that Kenney failed to complete another request for a public records request form, therefore no further action was taken on his part regarding the matter.

Finally, according to Whitted, the records referenced in request for clarification were not provided to Kenney by the

City. Therefore, it is not the responsibility of the City to comment of such records. Whitted also argues that the “interrogatories” made by Kenney are not an appropriate APRA request.

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

Indeed, APRA contains exemptions and discretionary exceptions to the general rule of disclosure. *See* Ind. Code § 5-14-3-4(a); -(b). This case largely involves APRA’s reasonable particularity provision.

2. Kenney’s requests

Kenney submitted several requests to Columbus. For purpose of clarity, they will be addressed in turn.

2.1 The August 27 request

In her initial request, Kenney submitted a request for service records of named employees. She did not identify a specifically named document that the city uses for its internal recordkeeping.

Because she doesn't have to.

APRA's reasonable particularity standard is in place to prevent the "wild goose chase" of a request seeking broad records that may or may not be responsive to a reasonable request. It is not a convenient way to dismiss a request if the requester does not know the name of a form or internal document. It just has to be described to a practical degree.

"Reasonable particularity" is not defined within the APRA; however, Indiana Code section 5-14-3-1 states that "[t]his chapter shall be liberally construed to implement this policy and place the burden of proof for the nondisclosure of a public record on the public agency that would deny access to the record and not on the person seeking to inspect and copy the record." *Jent v. Fort Wayne Police Department*, 973 N.E.2d 30, 33 (Ind.Ct.App.2012).

The City of Columbus appears resistant to undertaking a search because Kenney requested "any additional documents reflecting..." certain information.

I'll make it simple for the City: Timesheets. She's seeking timesheets. Or whatever the City substitutes for a record-keeping system of employee time. Any municipality with a modicum of understanding of public business should be able to decipher her request with ease. The entire context surrounding this request is obvious. The same goes for service records. They would equate to the documentation

required to be provided under Indiana Code section 5-14-3-4(b)(8). They are personnel records.

The standard is *reasonable* particularity, not hyper-specific particularity. The City's argument falls flat and frankly does not appear to be in good faith based on the information provided.

If these records do not exist, so be it. But hiding behind the reasonable particularity standard for this set of requests is dismissive at best.²

2.2 The August 28 request

Once again, Kenney described with appropriate detail the policies she sought. These policies would not be difficult or impractical to produce. A requester is not required to have insider knowledge of a policy's esoteric name in order to make a valid request. Clairvoyance is not a prerequisite to public access.

2.3 The September request

The City is correct that Kenney's September request is not strictly a public records request, she is simply asking questions to meet the City's unreasonable criteria of self-defined particularity. If a requester cannot seek information to make an appropriate document request because a prior request has been deemed unspecific, then the law is not worth the paper it's printed on. Therefore, while the denial

² In terms of item (c), this office has independently verified that the State Board of Accounts does have the originals of these records and did not leave copies behind.

of this request is not strictly within the scope of the access laws, the City's double-standard is noted.

CONCLUSION

Based on the foregoing, it is the opinion of this office that the City of Columbus has violated the Access to Public Records Act if records responsive to the Complainant's request exist within City offices.

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

Luke H. Britt
Public Access Counselor