OPINION OF THE PUBLIC ACCESS COUNSELOR

DAVID M. ASKINS,
Complainant,

v.

BLOOMINGTON COMMON COUNCIL,
Respondent.

Formal Complaint No.
20-FC-84

Luke H. Britt
Public Access Counselor

BRITT, opinion of the Counselor:

This advisory opinion is in response to a formal complaints alleging the Bloomington City Council violated the Access to Public Records Act.[1] Stephen Lucas, the Deputy Attorney for the Council filed a response with this office. 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 June 15, 2020.

[1] Ind. Code § 5-14-3-1–10.

BACKGROUND

This case involves a dispute over access to emails exchanged between members of the Bloomington Common Council.

On May 1, 2020, Dave Askins filed a public records request with the council seeking the following:

> A copy of all emails exchanged on the dates April 1 to April 30, 2020 between members of the Bloomington City Council on the topic of food and beverage tax proceeds. At minimum this request should include emails containing the key words 'FABTAC' and 'food and beverage.'

On May 22, 2020, the Council denied the request arguing that it did not meet the Access to Public Records Act's (APRA) requirements for reasonable particularity.

Three weeks later, Askins filed a formal complaint with this office asserting the Council violated APRA by denying the request. In essence, Askins argues that the Council inappropriately applied guidance published by this office regarding requests for email records. He claims that his request contained enough information that the Council should have had no problem identifying, retrieving, and producing responsive records in a timely manner.

On July 7, 2020, the Council, through attorney Stephen Lucas, responded to Askins' complaint. The Council denies wrongdoing, maintaining that Askins' request was not reasonably particular based on guidance provided by the Public Access Counselor. Specifically, the Council relies on this office's analysis of reasonable particularity as it relates to requests for emails in *Opinion of the Public Access Counselor*, 18-

FC-63 (2018). In that case, this office concluded that a request for email records, in order to be reasonably particular, needs to include the name of the sender, name of the recipient, a timeframe of six months or less, and a specified subject matter or search terms.

Moreover, the Council argues that expanding the search parameters for this particular request would erode Bloomington's ability to narrow the scope of other searches. In essence, the guidance provided by this office was established so that all requests reviewed and processed in a similar manner, and since Askins' request would require the Council to review as many as 36 lanes or channels of email messages, his request was deemed not reasonably particular.

ANALYSIS

The key issue in this complaint is whether the Access to Public Records Act requires an individual to strictly adhere to the four factors of an email search to successfully submit a request.

1. The Access to Public Records Act

It is the public policy of the State of Indiana that all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees. Ind. Code § 5-14-3-1.

The Access to Public Records Act (APRA) says "(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." *Id.*

There is no dispute that the City of Bloomington is a public agency for the purposes of the APRA; and thus, subject to the law's disclosure requirements. Ind. Code § 5-14-3-2(q)(6). Therefore, unless otherwise provided by statute, any person may inspect and copy the City's public records during regular business hours. *See* Ind. Code § 5-14-3-3(a). Even so, APRA contains both mandatory and discretionary exceptions to the general rule of disclosure. *See* Ind. Code § 5-14-3-4(a)–(b).

This case involves the application of APRA's reasonable particularity standard and this office's interpretation of that standard.

2. Reasonable particularity of emails

The crux of this dispute is whether the request by Askins meets the reasonable particularity standard set by APRA, our courts, and this office. Under APRA, a request for inspection or copying "must identify with reasonable particularity the record being requested." Ind. Code § 5-14-3-3(a)(1).

Requiring reasonable particularity relieves a public agency from the guesswork of having to anticipate exactly what a requester is seeking. To borrow an idiom from our colleagues at the Hoosier State Press Association, a request should be more like a rifle less like that of a shotgun.

Although "reasonable particularity" is not statutorily defined, the Indiana Court of Appeals addressed the meaning of the phrase in two seminal cases. First, in *Jent v. Fort*

Wayne Police Dept.[2], which involved a dispute about daily incident report logs, the court concluded that reasonable particularity "turns, in part, on whether the person making the request provides the agency with information that enables the agency to search for, locate, and retrieve the records." 973 N.E.2d at 34.

The second case specifically addressed emails and the sufficiency of search parameters. *See Anderson v. Huntington County Bd. of Com'rs*, 983 N.E.2d 613 (Ind. Ct. App. 2013). The *Anderson* court essentially ratified a 2012 opinion of the Public Access Counselor pursuant to an underlying formal complaint between the two parties.

In sum, that opinion began an ongoing effort by this office to pare down and identify the necessary factors of a particularized email request.

Notably, the Indiana Supreme Court denied transfer in both cases, which indicates the two cases could be read harmoniously.

Here, the Council correctly cites previous opinions by this office attempting to set forth essential components of request specificity. To the extent its denial and response rely on those opinions, Bloomington is justified in doing so and will not be faulted in this case.

Still, there is no "one size fits all" definition of reasonable particularity. In fact, this office has previously acknowledged the elements to be "largely context-specific, in that the generality or accuracy of those elements may fluctuate

[2] 973 N.E.2d 30 (Ind. Ct. App. 2012).

on a case-by-case basis." *See Opinion of the Public Access Counselo*r, 17-INF17 (2017).

In this case, Askins frames his argument well and raises issues this office struggles with from time to time. It is true that a successful request for emails is succinct, narrow, and generally points toward the records the requester seeks. Email is particularly difficult because, to an outsider, unless he has inside knowledge of an email, the request is largely a guessing game. This office, and the courts, seek to limit that guessing game to a reasonable exercise. That is not to say email requests are all fishing expeditions because they are not. Only that some requests are so large as to be impractical and unmanageable.

This is especially so when a request is submitted to an undefined group, e.g., "all city employees to vendor X;" "anyone in the Sheriff's office to personnel in the prosecutor's office;" and so on.

These are the types of requests this office cannot ratify as reasonably particular. Otherwise agencies would spend all their time searching folders and inboxes for wild geese which may or may not exist.

The parameters suggested by this office are rooted in practicality, but are flexible. The present request involves a single month and a single subject matter. And while the lanes of communication are more than four, each council member would merely need to search their account for their eight defined colleagues on the council.

Thus, this is one of those occasions where it seems prudent that the agency can be flexible as to the technocratic elements of reasonable particularity. While this office will not find a violation on the part of the Council, we urge it to reevaluate the request, make a diligent search, and produce any responsive documents.

CONCLUSION

Based on the foregoing, it is the opinion of this office that the Bloomington Common Council did not violate the Access to Public Records Act. At the same time, this office recommends the council proceed with the above suggestions.

Luke H. Britt
Public Access Counselor