
OPINION OF THE PUBLIC ACCESS COUNSELOR

DARIUSH A. SHAFI,
Complainant,

v.

INDIANA DEPARTMENT OF CORRECTION,
Respondent.

Formal Complaint No.
20-FC-90

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 Correction violated the Access to Public Records Act.¹ Megan Little filed a response with our office, on behalf of IDOC. 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 6, 2020.

¹ Ind. Code § 5-14-3-1-10.

BACKGROUND

This case involves a dispute over access to records and recordings related to a use of force incident that took place at the Branchville Correctional Facility on May 18, 2020.

On May 26, 2020, Dariush Shafa (Complainant) filed a public records request with the Indiana Department of Correction (IDOC) seeking “digital files, scans, copies, and correspondences” of the following:

- a) Video and audio recordings of the gymnasium space where the inmates were kept. Said recordings should be for the entire duration of the time the inmates were kept there
- b) All documentation pertaining to use of force against inmates during the time the inmates were kept there
- c) A report listing any injuries suffered by inmates or staff as a result of said incident (I am looking for an accounting or list of the types of injuries suffered/ treated and the timeliness in which said care was given)
- d) Any and all complaints and/ or grievances filed since said incident (either by inmates who were present or which were filed in connection to said incident)
- e) Documentation and communications pertaining to any and all guidance issued by Indiana Department of Correction leadership- especially medical- with regard to use of pepper spray, OC, mace (or any other type of inhaled/skin contact irritant) and their uses during the COVID-19 pandemic

Shafa filed the request with IDOC after receiving confirmation from agency spokesperson Margaux Auxier that an incident involving the use of force on inmates at the Branchville Correctional Facility did indeed occur.

On June 10, 2020, the IDOC denied parts (a) through (d) of Shafa's request. IDOC asserted the records were confidential in accordance with state regulations²; and thus, exempt from disclosure under the Access to Public Records Act (APRA). Additionally, IDOC rejected part (e) of Shafa's request on grounds that it lacked reasonably particularity as required by APRA. IDOC requested that Shafa narrow his request by providing specific search terms or keywords, a date range, and specific senders and recipients.

As a result, on July 1, 2020, Shafa filed a formal complaint with this office alleging IDOC's denial violates APRA.

Specifically, Shafa argues that the exemptions IDOC relied on to withhold the requested records should not be applied under these circumstances because the records relate to the public health of all those living in Perry County as well as the inmates at the Branchville Correctional Facility, and concerns surrounding public health during this time of COVID- 19 should supersede concerns of information confidentiality

Shafa also argues that IDOC's request for greater clarification is unreasonable because he does not know the senders or recipients in question because he does not have a directory or listing of staff at Branchville Correctional Facility.

² 210 IAC 1-6-2(2)(A), and (D); 210 IAC 1-6-2(3)(B), (C), and (E).

Moreover, Shafa asserts that his request provided sufficient search terms for IDOC to narrow the search.

On July 8, 2020, IDOC responded to Shafa's complaint denying any wrong-doing.

IDOC contends that it denied part (a) of Shafa's request because the responsive records would contain images of multiple offenders as well as their "voice prints." The agency asserts that it denied part (c) of the request because the responsive records would contain medical and employment records for both parties. IDOC says both types of records are classified as restricted, which means they can only be released to the offender or someone they have designated to have access to these records in accordance with 210 IAC 1-6-4(a).

IDOC asserts that it denied part (b) of Shafa's request because the responsive records would contain internal investigation information, which again is classified as confidential and may not be disclosed in accordance with 210 IAC 1-6-2(3) (E), Indiana Code section 5-14-3-4, and Indiana Code section 11-8-5-2.

IDOC explained that it denied part (d) of Shafa's request because it was overbroad and the requested records are considered confidential. Specifically, the request for grievances from inmates could contain information about multiple offender's classification status disciplinary history, medical information, educational reports, or other information that is exempted from public disclosure.

Finally, IDOC claims that its request for Shafa to clarify part (e) of his request was reasonable because the request for IDOC leadership communications is too broad, since there

are many different levels and divisions of leadership both at the central office and the facility.

ANALYSIS

The key issue in this complaint is whether the Access to Public Records Act requires a prison facility to release records and information about offenders and incidents that take place at the prison.

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 Indiana Department of Correction (IDOC) 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 IDOC’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 deference to agency administrative rules of the IDOC.

2. Nondisclosable information of prison facilities

A noteworthy exception to the rule of disclosure under APRA is the ability of certain agencies with proscribed rule-making authority to declare its records confidential.

APRA exempts from disclosure public records declared confidential by rule adopted by a public agency under specific authority to classify public records as confidential granted to the public agency by statute. Ind. Code § 5-14-3-4(a)(2). The statute giving IDOC that authority is Indiana Code section 11-8-5-2. It includes information about an inmate or former inmate that identifies:

- (1) Medical, psychiatric, or psychological data or opinion which might adversely affect that person's emotional well-being.
- (2) Information relating to a pending investigation of alleged criminal activity or other misconduct.
- (3) Information which, if disclosed, might result in physical harm to that person or other persons.
- (4) Sources of information obtained only upon a promise of confidentiality.
- (5) Information required by law or promulgated rule to be maintained as confidential.

In turn, the IDOC has promulgated rules under Title 210 of the Indiana Administrative Code. Namely, 210 IAC 1-6-2 and 4. These rules are quite broad and encompass the types

of information sought in the request. It includes, in part, the following:

(2) Restricted information shall include, but is not limited, to the following:

(A) Education, medical, sex offender, substance abuse, disciplinary, criminal, and employment records.

(B) Finger and voice prints.

(C) Photographs.

(D) Institutional summaries.

(E) Psychiatric and psychological reports.

(F) Social history reports.

(G) Progress reports.

(H) Educational and vocational reports.

(3) Confidential information shall include, but is not limited to, the following:

(A) Offender diagnostic/classification reports.

(B) Criminal intelligence information.

(C) Information that, if disclosed, might result in physical harm to that person or other persons.

(D) Information obtained upon promise of confidentiality.

(E) Internal investigation information.

(F) All juvenile records.

(G) Any other information required by law or promulgated rule to be maintained as confidential.

It can be reasonably said that much of the information requested falls into these categories. The analysis does not stop there, however, 210 IAC 1-6-2(a) also includes the following provision:

- (1) Unrestricted information shall include only information pertaining to an offender that is considered by law to be public information. *Certain information normally considered restricted or confidential may be considered unrestricted information if there is a compelling public interest in disclosure.* Unrestricted information is accessible by any person upon specific request, with the exception of offenders to whom the information does not pertain or any juvenile.

(Emphasis added). This strikes at the heart of Shafa's complaint. This office is not necessarily the arbiter of determining compelling public interest, but his statements are well-taken nonetheless. IDOC has conceded the incident occurred and it goes without saying there is a compelling public interest in some of the information. IDOC's withholding of the entirety of the details may or may not be too draconian for the situation.

The same holds true for the reasonable particularity argument. While indeed the request does not meet standards of specificity set forth by this office and the courts, IDOC may be well served to provide the requester with some measure of helpful information. Toward that end, while IDOC has

not violated the Access to Public Records Act, I do encourage them to reevaluate to determine if there is some information which can be reasonably released.

CONCLUSION

Based on the foregoing, it is the opinion of this office that the Indiana Department of Correction did not violate the Access to Public Records Act. At the same time, IDOC is encouraged to reevaluate consistent with the latter portion of this opinion.

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

Luke H. Britt
Public Access Counselor