
OPINION OF THE PUBLIC ACCESS COUNSELOR

BOB SEGALL
Complainant,

v.

INDIANA DEPT. OF WORKFORCE DEVELOPMENT,
Respondent.

Formal Complaint No.
21-FC-162

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 Workforce Development violated the Access to Public Records Act.¹ General Counsel Elizabeth Green submitted statement on behalf of the agency. In accordance with Indiana Code § 5-14-5-10, I issue the following opinion to the formal complaint received

¹ Ind. Code § 5-14-3-1 to -10.

by the Office of the Public Access Counselor on September 29, 2021.

BACKGROUND

In this case we consider whether the Indiana Department of Workforce Development (DWD) violated the Access to Public Records Act (APRA) regarding the production of public records.

On June 17, 2020, Bob Segall (Complainant), a reporter with WTHR, filed a public records request with DWD seeking information regarding unemployment claims (UI), specifically:

The total number of UI claims (statewide) that were **paid** by DWD for each week from January 4, 2020 to the present (not the dollar amount but the number of claims)

The total number of UI claims (statewide) that have **not been paid and are considered pending** by DWD for each week from January 4, 2020 to the present

The total number of UI claims (statewide) that have **not been paid and that DWD denied or determined to be ineligible for payment** for each week from January 4, 2020 to the present

On August 21, 2020, DWD responded to Segall's request by providing a chart detailing weekly unemployment claims data including the number of claims filed and the number of claims determined to be ineligible/non-payable, paid, and pending.

On October 9, 2020, Segall submitted another request, seeking the same information in the same format covering the timeframe since the previous request. DWD again provided the requested materials.

On February 5, 2021, Segall again filed a records request with the agency seeking updated data in the same format as it was presented the previous two times. After not receiving anything from the agency, Segall sent the DWD a reminder email that his request had yet to be fulfilled.

On July 16, 2021, a reminder of the pending request was given verbally to Commissioner Fred Payne and DWD communications representative Scott Olson. After which the records were still not provided.

On July 21, 2021, DWD general counsel Elizabeth Green denied Segall's request stating the following:

DWD responded to your February 5, 2021 request on March 30, 2021 and provided data responsive to your request. The August 2020 spreadsheet you reference is not a spreadsheet that DWD maintains and updates. It was created once, in response to your initial requests in 2020. DWD has not subsequently updated that spreadsheet.

Segall argues he did not receive any responsive records. Segall told DWD this via an email sent on the same day, and again on September 27, 2021, immediately before he filed his formal complaint with this office.

Based on how DWD responded to two other requests for records, Segall alleges that DWD violated the Access to

Public Records Act by denying his request. As a result, Segal filed a formal complaint on September 28, 2021.

On October 19, 2021, DWD responded to Segall's complaint. It argues that since the start of the COVID-19 pandemic in March 2020, the agency has seen a staggering increase of claims, which resulted in a significant increase of workload throughout the agency. Additionally, DWD asserts there has been an increased interest in the agency itself, which is evidenced by a spike in public records and data requests submitted to DWD.

On top of the increased workload facing the agency, DWD contends that Segall's request is not as straightforward as he claims. DWD asserts that it is a complicated inquiry for data with multiple variables, and different reports have been created at different times throughout the pandemic, not all of which have remained in use. Therefore, DWD has spent a substantial amount of time and resources, and the efforts to finalize DWD's response have remained ongoing.

Overall, DWD argues that it never denied Segall's request. On October 18, 2021, DWD contends that it provided Segall a response to his request. This office did not receive a copy of that response. In any event, DWD maintains that it did not violate the Access to Public Records Act.

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 Indiana Department of Workforce Development is a public agency for purposes of APRA; and therefore, subject to its 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 DWD’s public records during regular business hours. Ind. Code § 5-14-3-3(a).

2. Requests for data and reports

During the COVID-19 pandemic, a frequent (and understandable) request will seek reports or data by government agencies on the front lines of mitigation efforts. Journalists and interested members of the public are naturally curious as to how agencies have responded to certain aspects of the pandemic, and rightfully so.

Some agencies, both state and local, have gone to the efforts to be proactive with data by creating dashboards and reports tracking their work and efforts. It goes without saying that part of good governance is helping constituents understand how public agencies are working on their behalf.

At certain points during the pandemic, this office has suggested—on a case-by-case basis—that an agency create a report or data set, that it would otherwise not have created, in order to fulfill a request.

Legally speaking, this cuts against the absolute requirements of the law.

Under APRA, a public record is defined as:

any writing, paper, report, study, map, photograph, book, card, tape recording, or other material *that is created, received, retained, maintained, or*

filed by or with a public agency and which is generated on paper, paper substitutes, photographic media, chemically based media, magnetic or machine readable media, electronically stored data, or any other material, regardless of form or characteristics.

Ind. Code § 5-14-3-2(q) (emphasis added). Generally—albeit with a handful of notable exceptions—APRA does not mandate the creation of public records. It also does not require an aggregation or synthesis of data.

All of the verbiage in the definition of public records, both active and passive, is past tense. Meaning if a record exists, it qualifies as a public record. But if it has not yet been created, an agency is under no obligation to will it into existence, even pursuant to a request.

Here, the reports created by DWD were somewhat outside its usual course of business. It would not have created some of them but for Segall's request. Others may be been created for agency purposes but are no longer necessary for the discharge of its duties.

This can be frustrating to a degree for requesters who have come to expect certain information packaged in a manner to which they have become accustomed. It has been the position of this office, however, that a record created for the purposes of fulfilling a bespoke request does not necessarily set a precedent for future requests. It may be a one-off situation where the easiest way to fulfill a request is to create a document rather than deny the ask outright.

Notably, larger government agencies have a huge range of complicated datasets that require specialized expertise to digest and manipulate. They are often created for internal operational purposes and while they are created for the benefit of the public, they are not necessarily meant for immediate and direct public consumption. Based on this office's experience, DWD is one of those agencies. Even so, it has worked with Segall to provide him with information, even if it is not as swift or neat as he would prefer.

Segall is just one of many whose sights are set on DWD. Delays in production of documents are an inevitable consequence of the heightened number of record requests and scrutiny. Undoubtedly, Segall has been patient and has communicated his expectations clearly. Conversely, DWD has looped this office in on its response and have gone to lengths to find compromises.

Based on the information provided, this office is disinclined to find an APRA violation on the part of DWD.

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

Luke H. Britt
Public Access Counselor