
OPINION OF THE PUBLIC ACCESS COUNSELOR

BARBARA S. TULLY
Complainant,

v.

OFFICE OF THE INDIANA ATTORNEY GENERAL,
Respondent.

Formal Complaint No.
21-FC-63

Luke H. Britt
Public Access Counselor

BRITT, opinion of the counselor:

This advisory opinion is in response to a formal complaint alleging the Office of the Indiana Attorney General violated the Access to Public Records Act.¹ Advisory Division Chief Counsel John Walls filed an answer on behalf of the office. 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 May 20, 2021.

¹ Ind. Code § 5-14-3-1-10.

BACKGROUND

This case involves a dispute over access to records of communication between the Office of the Indiana Attorney General (OAG) and several outside organizations.

On January 12, 2021, Barbara Tully (Complainant) filed a public records request with the OAG seeking the following:

All communications, written or digital, sent or received between November 9, 2020, and January 8, 2021, from or to the Republican State Attorneys' General Association (RAGA), the Rule of Law Defense Fund (RLDF, or Donald J. Trump for President, Inc., or any person purporting to represent, by an agent or attorney representing, or to be acting on behalf of any of said entities, to or from former Attorney General Curtis T. Hill, Jr., Hill's Chief of Staff Mary Beth Bonaventura, Hill's Chief Deputy Attorney General Aaron Negangard, or Attorney General-elect Todd Rokita, that discusses, mentions, or references an original action complaint filed in the United States Supreme Court by the State of Texas against the Commonwealth of Pennsylvania (later assigned Docket No. 220155) or that discusses, mentions, or references any litigation challenging the results of the presidential election held on November 3, 2020, in any state.

This request encompasses the personal email accounts of any of the above if the individual has used his/her personal email for public business. It also encompasses records of phone calls or text messages made on any cellular phone used to conduct public business by any of the persons

mentioned above that reflect phone calls or text messages with any persons connected with the RAGA, RLDF, or Trump for President.

The OAG acknowledged Tully's request was acknowledged on January 21, 2021.

As of May 20, 2021, Tully contends that she had not received a further response or update on the request; and thus, she filed a formal complaint with this office.

The OAG filed an answer on June 16, 2021. The OAG does not dispute the timeline provided Tully but offers the reasons for the delay.

The OAG asserts that it accepted and processed Tully's request through the agency's information technology division but a network change delayed the production of the records. The OAG contends that it informed Tully of the status in February and April. The OAG states that the size of the request, the limited staff of the agency, and the pending number of records requests from others affected the timeliness of production.

The OAG asserts that it made the requested records available to Tully on June 11, 2021.

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. Office of the Indiana Attorney General (OAG) 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 the OAG’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).

2. Reasonable timeliness

The crux of the initial dispute is the timeliness for responding to a public records request with the responsive documents.

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, the law requires an agency within a reasonable time after the request is received to 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.

Ind. Code § ~~5-14-3-3(b)(1)~~–(2). The term “reasonable time” is not defined by APRA; and thus, it falls to this office to decide on a case-by-case basis whether an agency responded within a reasonable time. In doing so, this office considers the following factors: (1) the size of the public agency; (2) the size of the request; (3) the number of pending requests; (4) the complexity of the request; and (5) any other operational considerations or factors that may reasonably affect the public records process.

It is no secret that this office considers public access requests to be an integral part of the government's duty to inform constituents of its goings-on. At the same time, expectations of timeliness and efficiency in handling records requests are paramount and this office considers a delay of five months or more to be antithetical to the legislature's goal of an informed citizenry. Even so, this office is aware of other duties and competing priorities insofar as public business is concerned.

Tully's request was indeed complex. In other circumstances it may have been advisable to invite a narrowing of her request. Guidance for email specificity can be readily found in opinions published at www.in.gov/pac. Here, however, the OAG accepted the request as submitted, which put the agency on the clock for a response.

Reasonable timeliness is simply defined by this office as practical efficiency. Given the complexity of the request, the

timing of the request – the beginning of a new OAG administration – and the backlog of records requests, the delay may have been justified. In the future, however, now that the new administration has its feet under it and presumably has worked out some of the initial growing pains, timeliness should look different for future requests.

CONCLUSION

Based on the foregoing, it is the opinion of this office that the delay in production of documents was justified in this singular instance. At the same time, this office encourages the OAG to continue to implement procedures reducing production times for public records requests.



Luke H. Britt
Public Access Counselor