
OPINION OF THE PUBLIC ACCESS COUNSELOR

JEFFREY SLAVEN,
Complainant,

v.

TOWN OF ST. JOHN,
Respondent.

Formal Complaint No.
22-FC-101

Luke H. Britt
Public Access Counselor

BRITT, opinion of the counselor:

This advisory opinion is in response to a formal complaint alleging that The Town of St. John violated the Access to Public Records Act.¹ David W. Westland filed an answer on behalf of the town. 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 June 22, 2022.

¹ Ind. Code § 5-14-3-1-10.

BACKGROUND

In this case we explore whether a town's social media messages are accessible under the Access to Public Records Act (APRA).

On April 29, 2022, Jeffrey Slaven (Complainant) submitted a records request with the Town of St. John (Town) seeking social media "post history" for a specific date including any deletions from the Town Council page. Slaven also requested messages sent and received from the council's page.

On May 11, 2022, the Town provided Slaven with some responsive documents.

Slaven argues the information was only partially responsive as the messages were just thumbnails and not the full text of the message. He additionally argues that the messages he sent himself were not included in the production. Slaven submitted a subsequent response for a more thorough depiction of the messages; however, he was told that Facebook would not allow the items to be retrieved.

On June 22, 2022. Slaven filed a formal complaint with this office.

The Town responded on June 29, 2022. It argues that the Town was simply unable to retrieve the messages and can only view them in the manner provided to Slaven. The Town contends that the way it responded was the only way possible and nothing was withheld.

Two days later, Slaven filed a reply arguing the Town uses special social media archiving software and it should be easily able to retrieve the messages. Notably, the Town Council

confirmed that it uses ArchiveSocial for its social media during the council's meeting on August 24, 2022.

ANALYSIS

1. The Access to Public Records Act ("APRA")

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. Further, 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." *Id.*

The Town of St. John 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 Town's public records during regular business hours. Ind. Code § 5-14-3-3(a). Indeed, APRA contains mandatory exemptions and discretionary exceptions to the general rule of disclosure. *See* Ind. Code § 5-14-3-4(a) to -(b).

2. Social media and retention

Under APRA, the definition of public record includes:

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(r). While social media is not explicitly referenced in APRA, this office considers social media material to be covered by the definition of public record. Notably, however, for a post, tweet, picture, or page to be considered a public record, a public official or agency must create the documentation in the scope of their official capacity.

Here, there appears to be no dispute that the Town created the page as an official social media page of the Town.² Inasmuch, the material created on its social media account is subject to the local and county government retention schedule.³

Social media posts and affiliated documentation would likely fall under the retention category “General Files” (i.e., GEN 10-14), which has a retention period of three years. This means that the records must be preserved in a manner that enables anyone to potentially inspect and copy them in their entirety consistent with the law.

What is more, APRA requires a public agency to protect public records from loss, alteration, or destruction. *See* Ind. Code § 5-14-3-7(a). Here, it appears as if records germane to this discussion were somehow locked from even administrator view other than a preview panel.

This is not sufficient from a public records standpoint. Communication of this sort, if disclosable, shall be produced in

² This question was resolved in Opinion of the Public Access Counselor 22-FC-07.

³ https://www.in.gov/iara/files/county_general.pdf

its unaltered form upon request. The Town seemed to acknowledge this fact in its August 24, 2022, meeting where it discussed the renewal of its ArchiveSocial contract.

To that point, the entire exercise of archiving social media through a platform like ArchiveSocial is to be able to retrieve that material with ease, convenience, and efficiency. It is unclear if the Town went to the lengths of contacting the vendor for help. If it did, it stands to reason that the archiving vendor can retrieve those records on its behalf.

If it can do so, it should be produced to Slaven as soon as possible. If it cannot, then it has stored records in a manner inaccessible to the public (or itself) and the Town has run afoul of the Access to Public Records Act.

CONCLUSION

Given the statutory safeguards in place to prevent situations like this, the Town of St. John should have stored its material in a manner consistent with good recordkeeping practices. If the Town is unable to retrieve the full and complete record for Mr. Slaven, it has violated the Access to Public Records Act.



Luke H. Britt
Public Access Counselor

Issued: August 30, 2022