
OPINION OF THE PUBLIC ACCESS COUNSELOR

BOB SEGALL (WTHR-TV),
Complainant,

v.

HAMILTON SOUTHEASTERN SCHOOLS,
Respondent.

Formal Complaint No.
22-FC-108

Luke H. Britt
Public Access Counselor

BRITT, opinion of the counselor:

This advisory opinion is in response to a formal complaint alleging that Hamilton Southeastern Schools (HSE) violated the Access to Public Records Act.¹ Attorney Jessica Billingsley filed an answer on behalf of HSE. 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 July 11, 2022.

¹ Ind. Code § 5-14-3-1-10.

BACKGROUND

This case involves a dispute about whether Hamilton Southeastern Schools (HSE) violated the Access to Public Records Act (APRA) by failing to disclose public records in a timely manner.

On January 21, 2022, Bob Segall, a reporter for *WTHR-TV* (Complainant), submitted a public records request with the HSE seeking the following:

To inspect all bills, invoices and statements showing costs incurred or funds paid by Hamilton Southeastern Schools from January 1, 2017, through January 21, 2022, for charges from the Church, Church, Hittle & Antrim law firm that are associated with WTHR's APRA requests involving the suspension of former Fishers High School employee Rick Wimmer, subsequent filings with the Indiana Public Access Counselor and court-related matters involving these APRA requests. My request also includes all bills, invoices and statements showing costs incurred or funds paid by HSE during this time frame for insurance claims related to these matters, including but not limited to costs incurred or funds paid to HJ Spier, Wright Specialty Insurance, Catlin Indemnity and Caitlin-Morgan Insurance Services. If there are any other law firms, attorneys, insurance companies or other companies that received payment for legal or insurance-related services provided in relation to these matters, I am requesting that those bills, invoices and statements be provided, as well. In addition, I

am requesting that HSE provide information to itemize these charges, i.e. clarify which charges are related to the APRA matters involving Wimmer, as well as the total amount of money the school district has spent on legal services related to these matters.

WTHR also requested:

All insurance, liability and indemnity policies purchased by, for or on behalf of Hamilton Southeastern Schools for which HSE has incurred costs or paid funds in relation to legal matters involving Bob Segall and WTHR's requests for public records and related legal proceedings associated with the suspension of former HSE employee Rick Wimmer.

On January 24, 2022, the School acknowledged the request.

On March 2, 2022, the Director of School and Community Relations, Emily Pace Abbotts, responded to a follow-up inquiry from WTHR with a status update.

On April 19, Abbotts provided to the Complainant a 1-page document - a deductible invoice for Wright Specialty Insurance for 1/1/17 to 1/1/18. Additionally, HSE claimed that the invoice was the only document responsive to the request.

According to the complaint, WTHR does not believe that the school would only possess a single document over the prior five years that shows legal and insurance expenses paid by HSE for an ongoing legal matter for the school district. These concerns were shared with HSE but were never

addressed. On July 11, 2022, WTHR filed a formal complaint against HSE.

WTHR alleges that HSE violated APRA by withholding most of the requested records and failing to provide the other material in a timely manner. Specifically, the complaint argues that the request seeks easily identifiable and accessible information that has been identified with reasonable particularity by WTHR, and that there is no legitimate reason why it should take HSE nearly six months to grant access and fulfill its responsibility under APRA.

On August 1, 2022, Attorney Jessica Billingsley filed a response on behalf of HSE. HSE contends it provided WTHR with partially responsive documents, and that communications between the two parties focused on the content of those documents rather than the entirety of the request. Therefore, WTHR did not receive the requested insurance policy as originally requested. Billingsley attributes this “change of focus” as the reason why the remainder of the request “simply got lost in the shuffle” until WTHR reminded HSE of the original request in June 2022.

Without addressing the other documents and materials from the January 2022 request, HSE asserts that it did not violate the APRA because on July 29, 2022, it provided the requested insurance policy to WTHR.

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.*

Hamilton Southeastern Schools 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 HSE’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. Reasonable timeliness

APRA requires a public agency to provide public records to a requester within a reasonable time after receiving a request. *See* Ind. Code § 5-14-3-3(b). Notably, APRA does not define reasonable time.

Determining what is a reasonable time for production of public records depends on the records requested and circumstances surrounding the request.

Undoubtedly, certain types of records are easier than others to produce, review, and disclose. As a result, this office evaluates these issues case by case

This office has long recognized that certain factors are relevant in evaluating whether an agency is following APRA's reasonable time standard. These factors include but are not limited to the following: (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 that may reasonably affect the public records process.

Here, HSE concedes the request got "lost in the shuffle" over summer break. While this office appreciates the concession, this entire situation could have been resolved with a simple email and the production of the insurance policy.

CONCLUSION

Based on the foregoing, it is the opinion of this office that Hamilton Southeastern Schools violated the Access to Public Records Act by failing to produce relevant documentation within a reasonable time. That violation was softened by the eventual production of documents, but nonetheless going forward, HSE would be well served by being more attentive to public records requests like this one.



Luke H. Britt
Public Access Counselor

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