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**OPINION OF THE PUBLIC ACCESS COUNSELOR**

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MARK S. TIMBERMAN,  
*Complainant,*

v.

TOWN OF ZIONSVILLE,  
*Respondent.*

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Formal Complaint No.  
22-FC-26

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Luke H. Britt  
Public Access Counselor

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BRITT, opinion of the counselor:

This advisory opinion is in response to a formal complaint alleging the Town of Zionsville violated the Access to Public Records Act.<sup>1</sup> Attorney Amy Nooning filed an answer on behalf of Zionsville. 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 February 22, 2022.

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<sup>1</sup> Ind. Code § 5-14-3-1-10.

## **BACKGROUND**

This case involves a dispute about whether the Town of Zionsville took an unreasonable amount of time to respond to a public records request in violation of the Access to Public Records Act (APRA).

On November 13, 2021, Mark Timberman (Complainant) filed a public records request with Zionsville seeking the following:

    Emails and other communications, between Mayor Emily Styron's administration with the Zionsville Cultural District, Palette Art Studio, or Robert Goodman Jewelers regarding the social justice artwork on the traffic box located at the corner of Sycamore St. and Main St. in Zionsville, Indiana.

Two days later, Zionsville acknowledged Timberman's request. After the initial response, Timberman and Zionsville exchanged multiple emails regarding the status of the request.

Most recently, on February 10, 2022, Zionsville informed Timberman that the town's information technology department was still researching his request.

Twelve days later, Timberman filed a formal complaint with this office alleging Zionsville violated APRA. Specifically, Timberman argues that Zionsville failed to provide the records he requested in a reasonable amount of time. Timberman asserts that more than 100 days have went by since his initial request.

On March 11, 2021, Zionsville filed an answer to Timberman's complaint.

Zionsville argues that Timberman's request does not meet APRA's reasonable particularity standard because it is overbroad and did not include specific sender, recipient, email address, or a set timeframe for the communications.

Additionally, Zionsville asserts that the request required significant time to locate and review any potentially responsive records. More specifically, Zionsville contends that its IT department struggled with having groups of archived emails exported through the town's discovery tool, so that all of the potentially responsive emails can be reviewed for responsiveness. Moreover, Timberman submitted his request in mid-November, which also contributed to the delay because of the holiday season.

Zionsville contends that so far it has not identified responsive documents. The town is, however, still searching and if any records are located, they will be immediately released to Timberman.

## 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 Town of Zionsville (Town) 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. Timberman's request & reasonable particularity**

Timberman seeks a set of emails that may or may not exist. Indeed, this office has been quite vocal regarding requests for emails and the specificity required for a sound public records request.

Simply put, Timberman omitted critical search parameters from his request. Nonetheless, this lack of reasonable particularity should have caused Zionsville to solicit an amended request instead of several months of nonproduction.

Under APRA, all requests for public records must identify with reasonable particularity the records being requested. Ind. Code § 5-14-3-3(a)(1).

Although "reasonable particularity" is not statutorily defined, the Indiana Court of Appeals addressed the meaning of the phrase in two seminal cases.

First, in *Jent v. Fort Wayne Police Dept.*,<sup>2</sup> which involved a dispute over daily police incident reports, the court concluded that reasonable particularity "turns, in part, on whether the person making the request provides the agency

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<sup>2</sup> 973 N.E.2d 30 (Ind. Ct. App. 2012).

with information that enables the agency to search for, locate, and retrieve the records.” 973 N.E.2d at 34.

Second, in *Anderson v. Huntington County Bd. of Com’rs*, 983 N.E.2d 613 (Ind. Ct. App. 2013), the court specifically addressed requests for emails and the sufficiency of search parameters.

In *Anderson*, the court concluded that a records request seeking emails sent to or from four county employees was not “reasonably particular” as required by APRA. In that case, an employee spent ten hours and purchased new software in an effort to fulfill the request, which ultimately totaled 9500 emails, and the emails then had to be turned over to the human resources department for redaction. In *Anderson*, the court essentially ratified a 2012 opinion of this office addressing the same dispute.

Since that time, this office as continued to develop the standard for what is a reasonably particular request for email messages:

1. Sender;
2. Recipient;
3. Reasonable timeframe (e.g., six months or less); and
4. Particularized subject matter or set of search terms.

This office has built on those search parameters within the “channels” of communication with factors including a time frame suggestion of six months or less, and a subject matter or key word list to give the agency an idea how to search.

Here, Timberman's request omits these crucial elements.

APRA's reasonable particularity standard is there to avoid sifting through what Zionsville claims is (and appears to be) an open-ended request.

The better practice would have been for Zionsville to engage Timberman in the beginning, asking him to pare down the scope of his request to a manageable degree. Instead, he was left to wait several months until he felt he had no option but to file his complaint, and rightfully so.

While neither side is blameless in this dispute, Timberman should have been granted the courtesy of a second bite at the request apple shortly after he submitted his query. Going forward, Zionsville should be mindful of saving requesters' time as well as its own.

## CONCLUSION

Based on the foregoing, it is the opinion of this office that the Town of Zionsville should have invited Timberman to narrow the scope of his initial request instead of waiting several months to call out the unspecific nature of his request.



Luke H. Britt  
Public Access Counselor

Issued: April 4, 2022