



# STATE OF INDIANA

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March 21, 2011

Mr. Martin F. Wilkey  
6938 Bluffridge Pl.  
Indianapolis, IN 46278

*Re: Formal Complaint 11-FC-55; Alleged Violation of the Access to Public Records Act by the Metropolitan School District of Pike Township*

Dear Mr. Wilkey:

This advisory opinion is in response to your formal complaint alleging the Metropolitan School District of Pike Township (the "School District") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-3 *et seq.* The School District's response by its attorney, Harold R. Bickham, is enclosed for your reference.

## BACKGROUND

In your complaint, you allege that you submitted two separate records requests to the School District seeking "[a]ll records and communications that relate to the employment and evaluation of Martin Wilkey in his capacity as a coach within the Pike Township School District," and "[a]ll records and communications that relate to the employment and evaluation of Curtis V. Goss in his capacity as a coach within the Pike Township School District." You state that the School District did not provide you with a written response stating the statutory exception authorizing the withholding of the requested records or provide you with the name and title of the person responsible for the denial. You also claim that "agents of the [School District] presented such emails to outside individuals immediately at following [sic] the time of request, though have [sic] not provided access as officially requested."

In response to your complaint, Mr. Bickham states that the School District responded to your request at the time you first submitted it on January 18, 2011. Specifically, Joseph Lambert, Human Resources Director for the School District, informed you that same day that he would look for responsive documents and respond to the request as soon as possible. On January 26th, Mr. Lambert notified you that he had copies of documents concerning Mr. Goss that are disclosable under Ind. Code § 5-14-3-4(b)(8). He also stated that you could inspect and copy your own personnel file pursuant to the same Indiana Code citation, and that the School District's information technology department was searching for any responsive email correspondence and would forward disclosable records to you once the department's

review was complete. The department's search for responsive emails returned "several thousand emails, each of which would have to be opened and analyzed for responsiveness and confidentiality," but the School District now argues that the APRA does not require such an electronic search of all School District email communications. On January 27th, you sent your second request for the same records that you sought access to in your January 18th request. You then filed this complaint on February 18th.

## ANALYSIS

The public policy of the APRA states, "[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." I.C. § 5-14-3-1. The School District is a public agency for the purposes of the APRA. I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy the School District's public records during regular business hours unless the public records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. I.C. § 5-14-3-3(a).

A request for access to public records may be oral or written. I.C. § 5-14-3-3(a); § 5-14-3-9(c). If the request is delivered in person and the agency does not respond within 24 hours, the request is deemed denied. I.C. § 5-14-3-9(a). A response from the public agency could be an acknowledgement that the request has been received and information regarding how or when the agency intends to comply. Here, the School District orally responded to your written request when Mr. Lambert informed you that he would look for responsive documents and respond to the request as soon as possible. It also appears that Mr. Lambert's January 26th letter complies with subsection 9(c)'s requirement that a denial of a written request be made in writing and include a citation to a statute authorizing the denial and the name and title or position of the person responsible for the denial. Mr. Lambert's letter cited to subsection 4(b)(8) of the APRA, which provides that, generally, public agencies may withhold personnel files of public employees at the agencies' discretion. I.C. § 5-14-3-4(b)(8). However, certain information regarding public employees must be released upon request, and that a present or former public employee is entitled to inspect and copy his or her entire personnel file. *Id.* Mr. Lambert's letter granted your request for access to your personnel file and informed you that the information required to be released under that statutory provision would be available to you. Moreover, it is clear from the letter that Mr. Lambert assumed responsibility for any denial of access contained therein.

The APRA does not prescribe timeframes for the actual production of records by a public agency. The public access counselor has stated repeatedly that agencies should make records available within a reasonable period of time considering all relevant facts and circumstances. *See, e.g., Opinion of the Public Access Counselor 00-FC-32.* Considering factors such as the nature of the requests (whether they are broad or narrow), how old the records are, and whether the records must be reviewed and edited to delete nondisclosable material is necessary to determine whether the agency has produced records within a reasonable timeframe. Section 7 of the APRA requires a public agency to regulate any material interference with the regular discharge of the functions or duties of the public agency or public employees. I.C. § 5-14-3-7(a). However, the APRA also provides that section 7 does not operate to deny to any person the rights secured by Section 3 of the APRA. I.C. § 5-14-3-7(c).

The ultimate burden lies with the public agency to show the time period for producing documents is reasonable. *Opinion of the Public Access Counselor 02-FC-45*. Here, the School District released records available to you under subsection 4(b)(8) on January 26th, which was eight days after you submitted your request on January 18th. The School District required more time to search for responsive email communications due to the information technology department's identification of "several thousand emails" responsive to your request. According to the School District, each of those emails had to be reviewed for relevance and to ensure that the School District would not release confidential information contained in the emails. Nothing in the APRA prevents the School District from voluntarily choosing to conduct such a search if it chooses, but Mr. Bickham is correct that several of my predecessors and I have opined that the APRA does not require public agencies to search through records -- electronically or manually -- to determine what records might contain information responsive to a request. *See Ops. of the Public Access Counselor 10-FC-57; 08-FC-124; 04-FC-38*. The APRA requires that a records request "identify with reasonable particularity the record being requested." I.C. § 5-14-3-3(a)(1). "Reasonable particularity" is not defined in the APRA, but the public access counselor has repeatedly opined that "when a public agency cannot ascertain what records a requester is seeking, the request likely has not been made with reasonable particularity." *Ops. of the Public Access Counselor 10-FC-57; 08-FC-176*. If an agency is required to manually read through every word of every record in an entire category of records in order to locate responsive documents or data, the request has not been made with reasonable particularity. In any event, under such circumstances where the School District identified several thousand emails and needed time to review each one prior to disclosure, it is my opinion that the School District did not act unreasonably by failing to release all records to you by February 18th.

#### CONCLUSION

For the foregoing reasons, it is my opinion that the School District did not violate the APRA.

Best regards,



Andrew J. Kossack

Public Access Counselor

cc: Harold R. Bickham