



STATE OF INDIANA

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February 20, 2013

Mr. Brian Vukadinovich
1129 E. 1300 N.
Wheatfield, Indiana 46392

Re: Formal Complaint 13-FC-24; Alleged Violation of the Access to Public Records Act by the Hanover Community School Corporation

Dear Mr. Vukadinovich:

This advisory opinion is in response to your formal complaint alleging the Hanover Community School Corporation ("School") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Joanne M. Rogers, Attorney, responded on behalf of the School. Her response is enclosed for your reference.

BACKGROUND

In your formal complaint, you provide that on January 7, 2103, you submitted a written request to the School for the following records:

1. All contracts for Mary Joan Dickson pertaining to sponsorship of the "Key Club";
2. All visitor sign-in sheets for Hanover Central High School, Hanover Center Middle School, Jane Ball Elementary, and Lincoln Elementary for the past five (5) school years that bear the signature of Mary Joan Dickson;
3. All written and electronic records of any kind that pertain to the scheduling and/or notice of Key Club meetings at the Hanover Central Middle/High School for the past five (5) school years, to include letters, notes, writings, memos, emails, facsimiles, etc. . . and to include all information stores on hard drives and any other electronic devices and accessories, such as flash drives, discs, etc. . . ;
4. All written and electronic records of any kind involving communications between Mary Joan Dickson and Just Biggs, Robert McRae, Kevin Bachinski, Jeff Brooks, Tony Hiatt, Carol Kaiser, Richard Cook, and David Sells, to include emails, facsimiles, letters, notes, writings, memos, etc. . and to include all information stores on hard drives and any other electronic devices and accessories, such as flash drives, discs, etc. . . ;

5. All written and electronic records of any and all meeting and/or discussions that took place with Mary Joan Dickson and any officials at Hanover Central Middle/High School, June Ball Elementary, and Lincoln Elementary to include emails, facsimiles, letters, notes, writings, memos, etc. . . and to include information stored on hard drives and any other electronic devices and accessories such as flash drives, discs, etc. . . ;
6. All written and electronic records of any and all requests that Mary Joan Dickson has make to any officials of Hanover Central Middle/High School, Jane Ball Elementary, and Lincoln Elementary for a meeting and/or discussion regarding complaints and/or concerns by Mary Joan Dickson on any school related matters to include requests made to Justin Biggs, Robert McRae, Kevin Bachinski, Jeff Brooks, Tony Hiatt, Carol Kaiser, Richard Cook, and David Sells;
7. All emails between Mary Joan Dickson and each individual school board members since June 1, 2011 to the present;
8. All emails between Dana Griner and each individual school board members since June 2, 2011 to the present;
9. All emails between Carol Kaiser and each individual school board members since June 1, 2011 to the present;
10. All emails generated by Mary Joan Dickson to Justin Biggs, Robert McRae, Kevin Bachinski, Jeff Brooks, Tony Hiatt, Carol Kaiser, Richard Cook, and David Sell and all responsive emails from these individuals back to Mary Joan Dickson;
11. All written and electronic records that in any way pertain to the severance agreement for Carol Kaiser to include letters, notes, writings, memos, emails, facsimiles, etc. . . and to include all information stored on hard drives and any other electronic devices and accessories such as flash drives, discs, etc. . .

On January 16, 2013, you received an email from Ms. Rogers stating that she had received a disk with the records, but was not able to electronically access the documents. As a result, she sent the disk to a vendor to address the access issues. On January 23, 2013, you submitted written correspondence to the School inquiring as to the status of your request. Ms Rogers responded to your inquiry on the same day and provided that the School's insurer determined that it was not a covered claim under the School's policy and the matter had been turned over to the School for further handling. Upon receipt of this correspondence, you inquired directly with the School regarding the status of your request. As of January 25, 2013, you have yet to receive any response to your January 23, 2013 inquiry nor has the School produced any records.

In response to your formal complaint, Ms. Rogers advised that she received potential records responsive to your request via disk. Ms. Rogers was unable to open the disk. She thereafter sent the disk to her firm's copying vendor, DC Data Corp., to ascertain if they could open the disk and advise as to how many documents were contained on it before ordering hard copies to be printed and electronically date stamped. DC Data Corp. advised Ms. Rogers that the disk contained in excess of 10,000 documents. At the same time, Ms. Rogers was advised that the School's insurance

company denied the School's claim to have her firm handle your request. Thus, Ms. Rogers informed DC Data Corp. to return the disk and take no further action. Ms. Rogers firm was not charged for the limited services that were provided by DC Data Corp., thus there are no invoices or bills. Ms. Rogers thereafter turned the matter over to the School for further handling, all of which was communicated to you.

Ms. Rogers further advised that while your request is overly broad, out of a spirit of corporation, the Board's Attorney, Mr. Kaminski, began the arduous task of reviewing the 10,000 records that were responsive to your request. Mr. Kaminski attempted to take steps to work with you in order to narrow your request, but his attempts were unsuccessful. Mr. Kaminski contacted the Public Access Counselor's Office seeking guidance whether the Counselor would assist the parties in acting as a mediator to the issue. I advised Mr. Kaminski that while I would be happy to assist the parties; however once a formal complaint has been filed I generally do not assist the parties in this fashion. Since a formal complaint had been filed in this matter, I advised that Mr. Kaminski that he should reach out to you in order to attempt to reach an agreement regarding your request. In light of your refusal to narrow your request, the School has determined that it will take weeks to review the records that have been collected. Based on the sheer volume of the requests you have previously submitted and the volume of records that are responsive to your request, the School declined your request to provide the records via piecemeal.

ANALYSIS

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

A request for records may be oral or written. *See* 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. *See* I.C. § 5-14-3-9(a). If the request is delivered by mail or facsimile and the agency does not respond to the request within seven (7) days of receipt, the request is deemed denied. *See* I.C. § 5-14-3-9(b). A response from the public agency could be an acknowledgement that the request has been received and include information regarding how or when the agency intends to comply. Here you submitted your request on January 7, 2013 to which the School responded via email on January 16, 2013. Thus, it is my opinion that the School acted contrary to the requirements of section 9(b) of the APRA by not acknowledging the receipt of your request within seven (7) days.

As to the substance of your request, 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.” See *Opinions of the Public Access Counselor 10-FC-57; 08-FC-176*. However, because the public policy of the APRA favors disclosure and the burden of proof for nondisclosure is placed on the public agency, if an agency needs clarification of a request, the agency should contact the requester for more information rather than simply denying the request. See generally IC 5-14-3-1; *Opinions of the Public Access Counselor 02-FC-13; 05-FC-87; 11-FC-88*. Further, the APRA does not require public agencies to conduct a manual or electronic search of its records to determine what records might contain information that is responsive to a request. See *Opinions of the Public Access Counselor 04-FC-38; 09-FC-124; and 10-FC-57*. The Indiana Court of Appeals held in *Anderson* that a request for electronic communication that fails to provide the sender, recipient, and date range is not considered to be reasonably particular. *Anderson v. Huntington County Bd. of Comm’rs*, 2013 Ind. App. LEXIS 36 (Ind. Ct. App. Jan. 29, 2013) (<http://www.in.gov/judiciary/opinions/pdf/01291301jgb.pdf>).

From the School’s response, it has collected approximately 10,000 electronic records that are responsive to your request. In light of *Anderson*, the only requests that you submitted to the School for electronic communication that cannot be considered to be made with reasonable particularity are requests 4 and 10, as both requests do not provide a date range for the electronic communications that are sought. As such, you should provide the School with a date range in order to allow the School to collect the records that are sought for requests 4 and 10. In my opinion, the remainder of the request that has been submitted, although quite broad, was made with reasonable particularity. However, you should be mindful that while the predominate portion of your request was made with reasonable particularity, the fact that there are approximately 10,000 records collected by the School that are responsive will have a significant impact on when the records will be disclosed to you in light of APRA’s requirement that all records be reviewed prior to disclosure.

The APRA provides a public agency shall provide records that are responsive to the request within a reasonable time. See I.C. § 5-14-3-3(b). The public access counselor has stated that among the factors to be considered in determining if the requirements of section 3(b) have been met include, the nature of the requests (whether they are broad or narrow), how old the records are, and whether the records must be reviewed and redacted prior to disclosure. The APRA requires an agency to separate and/or redact confidential information in public records before making the disclosable information available for inspection and copying. See I.C. § 5-14-3-6(a). 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. See I.C. § 5-14-3-7(a). However, Section 7 does not operate to deny to any person the rights secured by Section 3 of the Access to Public Records Act. See 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. See *Opinion of the Public Access Counselor 02-FC-45*. This office has often suggested a public agency make portions of a response available from time to time when a large number of documents are being reviewed for disclosure. See *Opinions of the Public Access Counselor 06-FC-184; 08-FC-56; 11-FC-172*. Further nothing in the APRA indicates that a public agency’s failure to provide “instant access” to the requested

records constitutes a denial of access. *See Opinions of the Public Access Counselor 09-FC-192 and 10-FC-121.*

You submitted your request for records to the School on January 7, 2013. You filed your formal complaint on January 25, 2013. The School has provided that it has collected over 10,000 records that are responsive to your request that it is in the process of reviewing at this time. While our office does suggest to agencies to make periodic disclosures when dealing with a larger request, the APRA contains no such requirement. In light of the extensive nature of your request, the School's requirement to review all records prior to disclosure, and its ongoing responsibility to maintain its normal duties and functions, which include responding to other request for records that have been submitted, it is my opinion that the School did not violate section 3(b) of the APRA by not providing all records responsive to your request within an 18-day time period. As noted *supra*, while it is my opinion that the predominate portion of your request was made with reasonable particularity, the expansive nature of the request will have a dramatic affect on the time in which the records are actually produced by the School in light of APRA's requirements for review. Again, I would encourage the School to the extent possible, especially those records that were not maintained electronically, to make periodic disclosures after the School has had an opportunity for review.

CONCLUSION

For the foregoing reasons, it is my opinion that the School acted contrary to the requirements of section 9(b) of the APRA in not responding to your request within seven (7) days of its receipt. It is my opinion that requests 4 and 10 submitted on January 7, 2013 were not made with reasonable particularity. Lastly, it is my opinion that the School has currently complied with section 3(b) of the APRA in providing all records responsive to the request in a reasonable period of time.

Best regards,

A handwritten signature in black ink, appearing to read "J. Hoage". The signature is written in a cursive style with a large initial "J" and a stylized "H".

Joseph B. Hoage
Public Access Counselor

cc: Joanne M. Rogers