



STATE OF INDIANA

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December 9, 2016

Mr. Zachary Baiel
124 Connolly Street
West Lafayette, Indiana 47906

Re: Formal Complaint 16-FC-280; Alleged Violation of the Access to Public Records Act by the West Lafayette Community School Corporation

Dear Mr. Baiel:

This advisory opinion is in response to your formal complaint alleging the West Lafayette Community School Corporation ("School") violated the Access to Public Records Act ("APRA"), Indiana Code § 5-14-3-1 et. seq. The School has responded to your complaint via Mr. Robert C. Reiling, Jr. Esq., attorney for the School. His response is enclosed for your review. Pursuant to Indiana Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on October 21, 2016.

BACKGROUND

Your complaint dated October 21, 2016, alleges the School has violated the APRA by not providing requested documents citing a lack of reasonable particularity.

Beginning in September 2016, you submitted a series of public records requests seeking emails from the School. The first several of those were identified as being lacking in specificity. Therefore, the School asked you to narrow your search based upon established search parameters provided by the Courts and this Office. Generally, they are a named sender, a named recipient, a date range and a subject matter or set of key words. You provided some of this information in subsequent requests.

If I am interpreting the information provided correctly, the controversy appears to revolve around your use of the words "board" and "president" as the lone key word search in your request. You contend these are specific enough to rise to the standard of reasonable particularity as required by Indiana Code § 5-14-3-3. The School argues these terms are too generic to begin a search.

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 Indiana Code § 5-14-3-1*. The West Lafayette Community School Corporation is a public agency for the purposes of the APRA. *See Indiana Code § 5-14-3-2(n)(1)*. Accordingly, any person has the right to inspect and copy the School’s disclosable public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. *See Indiana Code § 5-14-3-3(a)*.

There can be no question the Indiana Judiciary has interpreted reasonable particularity when it comes to emails as requiring a named sender, a named recipient and a date range. *See Anderson v. Huntington County Bd. of Comm’rs*, 983 N.E.2d 613 (Ind. Ct. App. 2013). Interestingly enough, that case adopted standards set forth by my predecessor, Counselor Joe Hoage, Esq., giving the opinion of the holder of this Office “considerable deference”. *Id* at 618. *See also Opinion of the Public Access Counselor 12-FC-44*.

As means of communication by public employees are ever-evolving, so too is the guidance from this office as to those means. For example, even in the few years since the *Anderson* case, email has become more and more ubiquitous as a method of transmitting information. Recognizing the huge amounts of documentation generated by some email requests, I have placed an additional parameter on what I consider to be a reasonably particular request: subject matter and/or key words. This is not to deter requestors from making requests, but rather to narrow the scope of a search to a practical set of specific documents.

You cite previous guidance from *Opinion of the Public Access Counselor 16-FC-60* in which I wrote:

Originally, your request lacked search terms. It was therefore lacking reasonable particularity. You amended your request with over 50 search terms, several of which were not true search terms, but instead were mere articles or pronouns. It should be noted terms such as “a”, “the”, “my”, “he”, “she”, “her”, “it” and “this” are not search terms. Articles and pronouns do not serve in any way to narrow the scope of the records sought. Search terms can be names, places, or even words like “meeting” and “report”...

Using that guidance, you set forth the search terms “board” and “president” likening those terms to “meeting” and “report”. I may have caused confusion in that prior Opinion by not stating key words should be unique enough to identify a specific identifying nexus of information, i.e. what kind of report or meeting. “Board” and “president” are general terms, especially to a school corporation with a school board and ostensibly, a president of that board. Similar to a discovery request in the course of litigation, a key word should be relevant and germane to a subject matter. By subject matter, I imply a theme or general idea. For example, “July 2016 *meeting*” or “HR staffing *report*” would have that identifying nexus, just as “*board’s* budget discussion” or “*president’s* decision to call an executive session” would give the School an idea of the thread of communication you are seeking.¹

¹ Please note that the additional Opinion you cite - 16-FC-128 – did not relate to email searches and is distinguished from the present analysis.

Make no mistake the School has an affirmative duty to search for, retrieve, and produce records pursuant to a request, however, they are only obligated to do so after a reasonably specific set of documents have been identified. It appears as if the School has taken steps to confer with you regarding specificity. They did use some unfortunate language to categorize you and your search – and I concede that commentary is superfluous and counter-productive. But they do not appear to be acting in bad faith or trying to hide anything. They are simply requesting you frame your search parameters in a reasonable manner. It is my sincere hope this guidance helps you craft a request which gives the School a foothold upon which to search.

CONCLUSION

Based on the aforementioned, it is the Opinion of the Public Access Counselor the West Lafayette Community School Corporation did not violate the Access to Public Records Act.

Regards,

A handwritten signature in black ink, appearing to read 'L. H. Britt', with a large, sweeping flourish underneath.

Luke H. Britt
Public Access Counselor

Cc: Robert C. Reiling, Jr., Esq.