



STATE OF INDIANA

ERIC J. HOLCOMB, Governor

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OPINION OF THE PUBLIC ACCESS COUNSELOR

MICHAEL PETRELIS,)	
)	
Complainant)	
)	
v.)	17-FC-52
)	
OFFICE OF THE INDIANA GOVERNOR)	
)	
Respondent)	

**ADVISORY OPINION
April 12, 2017**

This advisory opinion is in response to the formal complaint alleging the Office of the Indiana Governor (“Governor”) violated the Access to Public Records Act (“APRA”), Indiana Code § 5-14-1.5-1 et. seq. The Office of Governor Eric Holcomb responded via Mr. Joseph R. Heerens, Esq., General Counsel. Pursuant to 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 21, 2017.

BACKGROUND

The formal complaint dated January 21, 2017, alleges the Governor’s Office violated the APRA by requesting the Complainant to narrow the scope of his public records request to meet established standards of specificity.

On or about January 25, 2017, the Complainant submitted a records request for the following documents:

“all emails sent or received, on any topic, by First Lady Karen Pence from January 1, 2013 through January 20, 2017.”



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The Governor's Office acknowledged the request on January 27, 2017. On February 14, 2017, the Governor's Office responded and requested the Complainant narrow the scope of his request. The Complainant narrowed the request to six (6) months, however, did not provide a lane of communication traffic nor did he give a subject matter or key word search terms – two elements the Governor's Office argues is necessary for a reasonably particular request.

Current Governor Holcomb's Office responded by arguing the initial request was not reasonably particular by generally accepted standards of specificity. It also reiterated its willingness to work with the Complainant to gather and produce disclosable records should the request be sufficiently narrowed.

ANALYSIS

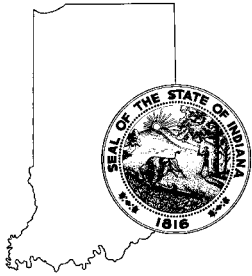
The public policy of the APRA states that "(p)roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information." *See Indiana Code § 5-14-3-1*. The Office of the Governor is a public agency for the purposes of the APRA. *See Indiana Code § 5-14-3-2(n)*. Accordingly, any person has the right to inspect and copy the Governor'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)*.

A critical element of a proper public records request is reasonable particularity. *See Indiana Code § 5-14-3-3*. In regard to email requests, my Office has consistently advised requesters there are four (4) elements to a reasonably particular search for an email message: a named sender, a named recipient, a timeframe of six months or less, and a set of search terms or subject matter as a parameter.

The Complainant argues the term, "reasonable particularity" is not defined in the APRA. This is accurate, however, the definition I have set forth during my tenure has been well received by public officials, the press and members of the public alike. It has not been overturned, or even challenged, before the judiciary. I penned the penultimate guidance in 2014 in *Informal Opinion of the Public Access Counselor 14-INF-30* wherein I opined:

Under the APRA, all requests must be reasonably particular in order for the public agency to locate, retrieve and produce records responsive to the request. *See Ind. Code § 5-14-3-3(a)*.

Although not defined in the APRA, the Indiana Court of Appeals addressed the issue of reasonable particularity in the APRA in *Jent v. Fort Wayne Police Dept.*, 973 N.E.2d 30



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(Ind. Ct. App. 2012), and again in *Anderson v. Huntington County Bd. of Com'rs.*, 983 N.E.2d 613 (Ind. Ct. App. 2013). The Court in *Jent* held that:

Whether a request identifies with reasonable particularity the record being requested turns, in part, on whether the person making the request provides the agency with information that enables the agency to search for, locate, and retrieve the records.

...

Consider the definition of particularity in *The New International Webster's Dictionary and Thesaurus, Encyclopedic Ed., 2000*: "*exactitude in description; circumstantiality; strict or careful attention to detail; fastidiousness.*" I do believe voluminous records requests can meet that standard and agencies are required to satisfy voluminous requests, but to meet the reasonable particularity standard, they cannot be blanket requests. When it comes to email, I generally rely on the guidance provided by the Court in *Anderson*. The Court agreed with former Public Access Counselor Hoage that a reasonably particular request names a specific sender, recipient, and date frame. I would also contend a specific request would include one or more key words for a search parameter.

I have revisited this issue several times over the past year as public records requests for emails have become more and more commonplace. I do not believe that requiring a named sender, recipient, date range (preferably six months or less) and a set of key words is so draconian as to be burdensome. This frankly prevents a "fishing expedition" and prevents a requester from casting a wide net to capture a voluminous amount of emails. A requester should have done enough leg work to know the lanes of email traffic between communicators.

The current request is for six months' worth of former First Lady Karen Pence's emails. It is true there are a finite number of email messages responsive to that request and they have been requested with particularity. However, that particularity must be *reasonable*. The Access to Public Records Act is not a license for universal requests for the *totality* of documents which may be in the custody of a public agency, hence the requirement for reasonable particularity. Elements of specificity must be identified. When no subject matter is given and no recipient or sender is identified, it lacks exactitude, circumstantiality; strict or careful attention to detail and fastidiousness. Inherent in the concept of reasonableness is an element of *practicality*. Asking for the totality of one person's email account without regard to any other perimeter is neither reasonable nor practical.



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Undoubtedly, emails composed by the former First Lady exist and many of those emails would be appropriate for disclosure. Similarly, it is the burden of the current administration to curate those records pursuant to a valid email request. But it is not the responsibility of any public agency to *guess* what records may or may not be responsive to a request. If there is a particular message or set of messages the Complainant is seeking based upon a subject matter, sender or recipient, he should identify those messages accordingly. Only then will the Governor's Office have the burden to search for, retrieve, and produce the records.

CONCLUSION

Based on the foregoing, it is the Opinion of the Public Access Counselor the Office of the Indiana Governor has not violated the Access to Public Records Act.

Luke H. Britt

A handwritten signature in black ink, appearing to read "L. Britt", written over a light gray rectangular background.

Public Access Counselor

Cc: Mr. Joseph R. Heerens, Esq.