

**OPINION OF THE PUBLIC ACCESS COUNSELOR**

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JUSTIN M. KIEL,  
*Complainant,*

v.

TRI-TOWNSHIP CONSOLIDATED SCHOOL CORP.,  
*Respondent.*

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Formal Complaint No.  
20-FC-155

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Luke H. Britt  
Public Access Counselor

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This advisory opinion is in response to a formal complaint alleging the Tri-Township Consolidated School Corporation violated the Access to Public Records Act.<sup>1</sup> Attorney Aaron Schmoll filed an answer on behalf of the TTCSC. 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 November 10, 2020.

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<sup>1</sup> Ind. Code § 5-14-3-1-10.

## **BACKGROUND**

This case involves a dispute regarding the production of certain financial records of Tri-Township Consolidated School Corporation (TTCSC) and issues concerning a request's reasonable particularity.

On February 24, 2020, Justin Kiel (Complainant) filed an in-person public records request with the TTCSC's Superintendent requesting copies of financial records related to building maintenance and equipment for the past five years. The next day, the superintendent acknowledged the request and asked for a specific timeline in which the requestor would like the school corporation to respond.

On September 24, 2020, Kiel submitted another request for records to TTCSC Superintendent Kelly Shepherd, asking again for copies of the maintenance expenditures itemized by building, along with the following:

1. The letter that you shared from Gib Crimmins to the board,
2. Dr. Balch's plan/document/work product that was created in Winter 2017/ Spring 2018

On September 28, 2020, after receiving no acknowledgement of his second records request, Kiel delivered, in person, a third request to the school corporation seeking the following:

- a) The letter that you shared to the board from Gib Crimmins during the 9/17/2020 meeting.

- b) The final plan, document, or work product created by Dr. Balch in Winter 2017 or Spring 2018 in regard to the school corporation's vision setting process.
- c) List of disbursements / claims made from the 2620 (maintenance of buildings) and 2640 (maintenance of equipment) funds between fiscal years 2016 and 2020. Ideally this would be in such a format that would denote which school any work was performed at. Please don't hesitate to contact us if there is a way, we can better focus this request in order to make Mrs. Roslansky's job gathering this data easier. Note: this request was originally made on February 24, 2020.
- d) Invoices paid by Tri-Township for legal services, including but not limited to the school corporation attorney Ms. Monica Conrad, in 2019 and 2020.
- e) The complete Capital Projects Plan as required be created under IC 20-40-18-6, particularly including the detailed list of specific proposed capital expenditures.

On September 30, 2020, Monica Conrad, an attorney for TTCSC, acknowledged both the September 24 and the September 28 requests. On October 7, 2020, Kiel emailed both Superintendent Shepherd and Ms. Conrad to request a status update on the progress of his request.

On October 8, 2020, Kiel was provided a copy of item (a) of his request, as well as a document intended to fulfill item (b) of the request. While the second document was created by Dr. Balch, it was not the work product described in the request. Kiel responded to Conrad informing her of the

mistake and never received a reply. While not specifically responding to Kiel's request, during a board meeting, TTCSC indicated that a detailed Capital Projects Plan did not exist.

As a result, Kiel filed a formal complaint with this office. Kiel alleges that TTCSC has violated the Access to Public Records Act (APRA) by failing to produce requested records within a reasonable time, as required under Indiana Code section 5-14-3-3(b).

On November 30, 2020, TTCSC, through attorney Aaron Schmoll, submitted a response denying Kiel's allegations. TTCSC contends that Kiel misunderstood the letter responding to his February 24, 2020 request. The February 25, 2020, acknowledgement cited the broad nature of the request, limited office staff, and current time being devoted to an audit process, among other factors, as reason for requesting a narrowed scope of the request. TTCSC asserts that the superintendent's statement was meant to inform Kiel that his request did not meet the requirements of reasonable particularity, rather than asking that he provide a specific timeline with which he would like the school corporation to provide him the requested records, as suggested in the complaint.

As for Kiel's second and third requests, TTCSC contends that the only requested items that are outstanding are the five years of financial records and two years of legal services invoices. TTCSC maintains that the request for five years of financial records is too broad and that it has been estimated that this request would result in more than 250 pages of invoices. Furthermore, the school corporation claims that on November 17, 2020, Kiel was again asked to narrow the

scope of his request to a specific date range or claim type, to which the school corporation received no response. Therefore, TTCSC argues that it has not denied Kiel's request for these items, rather they are still waiting for him to provide further clarification.

Similarly, TTCSC argues that the request for two years of legal invoices does not meet the specificity standard outlined by APRA. Regardless, TTCSC argues that pursuant to Indiana Code section 5-14-3-4(b)(2) certain records related to attorney work product are excepted from disclosure, and according to *Groth v. Pence*, 67 N.E.2d 1104, 1123 ( Ind. 2017), invoices for legal services constitutes attorney work product.

## ANALYSIS

### 1. The Access to Public Records Act

It is the public policy of the State of Indiana that all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees. Ind. Code § 5-14-3-1.

The Access to Public Records Act (APRA) says "(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." *Id.*

There is no dispute that the Tri-Township Community School Corporation is a public agency for the purposes of the APRA; and thus, subject to the law's disclosure requirements. Ind. Code § 5-14-3-2(q)(6). Therefore, unless

otherwise provided by statute, any person may inspect and copy the TTCSC's public records during regular business hours. *See* Ind. Code § 5-14-3-3(a). Even so, APRA contains both mandatory exemptions and discretionary exceptions to the general rule of disclosure. *See* Ind. Code § 5-14-3-4(a)–(b).

## **2. Reasonable particularity of Kiel's requests**

The primary issue in this case is whether Kiel's request meets APRA's reasonable particularity standard. Under APRA, a request for inspection or copying "must identify with reasonable particularity the record 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 incident report logs, the court concluded that reasonable particularity "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." 973 N.E.2d at 34.

Requiring reasonable particularity relieves a public agency from the guesswork of having to anticipate exactly what a requester is seeking.

At the same time, a requester does not have to identify with pinpoint accuracy the exact document (or set of documents) requested. Reasonable particularity is the guardrail keeping

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

the car in its lane, but not necessarily the roadblock bringing access to a complete stop.

This case presents a couple scenarios. Both will be addressed from September-on as it appears the February request was a miscommunication issue and would be moot based on timeliness.<sup>3</sup>

First, in regard to maintenance fund expenditures, it is unclear how these records are kept. Experience tells this office that expenditures from dedicated funds are fairly simple printouts for most public agencies. The accounting process is usually computerized and a query from a database can provide this data in a matter of minutes – even five years' worth. If this is the case, there should be no reason for an agency to require an agency to expect a narrowing of a request. Even if the report is multiple pages, the work and resources that go into performing the search is minimal and does not take away from other resources.

Still, there is no affirmative requirement—at least from this office's concern—that data be kept in any certain format for easy access. There are still agencies using ledgers for accounting. From the information provided, it is unclear if TTCSC is one of those agencies, but it is likely it has a more than just a manual, rudimentary system. The Indiana Department of Education likely requires a certain level of technological sophistication for financial reporting purposes.

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<sup>3</sup> Indiana Code § 5-14-5-7 sets a 30 day statute of limitations to file a complaint with this office. A complaint would have been due sometime over the summer on reasonable particularity grounds.

The judiciary has also stated that implicit in the Indiana access laws is practicality. *See Smith v. State*, 873 N.E.2d 197, 201 (Ind. Ct. App. 2007). This office adopts that standard as well.

Reasonable particularity is not always based solely on the volume or timeframe of the records sought, but rather on the practicality of having to perform a search.

I recommend TTSCS at least explore whether the search and production of the data from a singular dedicated fund is practicably feasible. If the task is unreasonable, so be it, but the request does not appear unreasonable on its face. Those assumptions aside, if the search is truly so impractical as to be unreasonable, the complainant would need to narrow its scope.

It should also be noted that the Indiana Department of Education's financial transparency dashboard has a wealth of information at the ready, including expenditures by fiscal year and dedicated funds<sup>4</sup>. The schools' Form 9 is fairly easy to pull up in six-month increments going back to 2008 although the maintenance fund was not immediately apparent on that particular report.

The second main set of records that remain outstanding are two years' worth of legal services encumbered by the school corporation. Kiel requested the invoices for these services. The search yielded 250 pages of invoices.

Much ink has been spilled by this office regarding access to legal invoices. The seminal case being *Opinion of the Public*

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<sup>4</sup> <https://form9.doe.in.gov/public/home/dashboard?#>



*Access Counselor*, 18-FC-131(2018), which is incorporated by reference.

There is no question legal invoices can, consistent with the Access to Public Records Act and the spirit of the law, contain *some* attorney-client communication material to be redacted. The issue here, however, is not the extent of redactions but the volume of material requested.

In this regard, we agree with the school corporation that this request may need to be narrowed. Legal services of school attorneys could involve any number of subjects from litigation strategy to administrative work and general advice.

Identifying a subject matter or initiative would be helpful to hone down the scope of those invoices and make it a more manageable and practical task. Unlike financial data, this task cannot be performed by a click or two of the mouse. If Kiel merely wanted an aggregate total of monies spent on legal services for two years, that would be a different matter altogether. He seeks the individual receipts, however, and these are the types of request that the concept of reasonable particularity seeks to address.

### **CONCLUSION**

Based on the foregoing, it is the opinion of this office that the Tri-Township Community School Corporation would likely be able to pull the financial data and honor Kiel's request without any further narrowing. At the same time, Kiel should narrow his request for the school corporation's legal invoices.



Luke H. Britt  
Public Access Counselor