



STATE OF INDIANA

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February 12, 2009

Eric Cox
The Banner newspaper
24 North Washington Street
Knightstown, Indiana 46148

Re: Formal Complaint 09-FC-24; Alleged Violation of the Access to Public Records Act by Charles A. Beard Memorial School Corporation

Dear Mr. Cox:

This advisory opinion is in response to your formal complaint alleging Charles A. Beard Memorial School Corporation ("CAB") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by denying you access to records. A copy of CAB's response to the complaint is enclosed. In my opinion the request at issue identified with reasonable particularity the records being requested but that you should provide CAB with an end date for the group of electronic mail messages of which you request copies.

BACKGROUND

You filed the present complaint on January 14, 2009. You allege that on November 19, 2008 and January 5, 2009 you requested from CAB copies of a number of records. At issue is your request for copies of any correspondence the superintendent sent to any CAB Board of Trustees members from September 1 to November 19, 2008. CAB did not provide copies of correspondence, claiming the request was not reasonably particular. When you restated the request on January 5, you included any electronic mail messages ("emails") sent from Board members to the superintendent as well as those previously requested. You also expanded the time period for the request, extending the closing date to seven days prior to production of the records.

CAB responded to the complaint by letter dated January 29 from Superintendent Gary Storie. CAB reasserts his reason for denial of access, that the request does not identify with reasonable particularity the record being requested. Superintendent Storie adds that after reviewing previous opinions from this office, he has decided to provide *The Banner* with the requested emails. Superintendent Storie seeks clarification as to the definition of "reasonable particularity."

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. CAB is a public agency for the purposes of the APRA. I.C. § 5-14-3-2(m). Accordingly, any person has the right to inspect and copy the public records of CAB 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).

The APRA requires that a request for inspection or copying identify "with reasonable particularity the record being requested." I.C. § 5-14-3-3(a). "Reasonable particularity" is not defined in the APRA. "When interpreting a statute the words and phrases in a statute are to be given their plain, ordinary, and usual meaning unless a contrary purpose is clearly shown by the statute itself." *Journal Gazette v. Board of Trustees of Purdue University*, 698 N.E.2d 826, 828 (Ind. App. 1998). Statutory provisions cannot be read standing alone; instead, they must be construed in light of the entire act of which they are a part. *Deaton v. City of Greenwood*, 582 N.E.2d 882 (Ind. App. 1991). "Particularity" as used in the APRA is defined as "the quality or state of being particular as distinguished from universal." *Merriam-Webster Online*, www.m-w.com, accessed July 18, 2007.

The issue of whether a request has identified with reasonable particularity has been addressed a number of times by my office. There are no specific guidelines as to what constitutes reasonable particularity. Certainly a request cannot always be considered to be made without reasonable particularity solely because it covers a large number of records. As I general guideline, I advise agencies that when a public agency cannot ascertain what records a requester is seeking, the request likely has not been made with reasonable particularity. I do not believe that to be the case here. While the request is certainly broad and may take a significant amount of time and expense on the part of CAB, it does not appear to be lacking reasonable particularity. The newspaper has identified which specific records it seeks.

I would note, though, that I do not believe the addition of the floating end date for the request is a valid request. As I have indicated in previous opinions, the definition of "public record" does not include records yet to be created, and as such an agency is under no obligation to produce records that have not been created. *See Opinion of the Public Access Counselor 07-FC-259*. The newspaper's request for any emails sent or received up to seven days prior to production is likely a request for records which do not yet exist. Certainly producing records in response to such a broad request will take CAB far more than seven days. If CAB were to comply with the request as it stands, the end date for the request would continue moving as CAB continues processing the request. I do not believe a floating or ongoing request like this is contemplated by the APRA. As such, it is my recommendation you provide a defined end date for the request.

CONCLUSION

For the foregoing reasons, it is my opinion the request at issue identified with reasonable particularity the records being requested.

Best regards,



Heather Willis Neal
Public Access Counselor

Cc: Gary Storie, Charles A. Beard Memorial School Corporation