



STATE OF INDIANA

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April 1, 2010

Ms. Joanna L. Masee
WRTV
1330 N. Meridian St.
Indianapolis, IN 46202

Re: Formal Complaint 10-FC-57; Alleged Violation of the Access to Public Records Act by the Metropolitan School District of Lawrence Township

Dear Ms. Masee:

This advisory opinion is in response to your formal complaint alleging the Metropolitan School District of Lawrence Township ("Schools") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* I have enclosed the Schools' response for your reference.

BACKGROUND

According to your complaint, you requested "copies of email communications sent from and received by email address concettaraimondi@msdlt.k12.in.us" for January 25th and 26th of this year. In response, the Schools' attorney denied your request on the basis that it was not made with reasonable particularity. You subsequently modified your request and sought "all e-mails sent from Dr. Raimondi on January 25th and 26th 2010 containing one or more of the following words: news, interview, cuts, Fernandez, Henry, board, school Joanna." The Schools also denied that request on the same basis, noting its position that "a school corporation is under no obligation to search through its electronic mail to determine which electronic mail messages contain particular words."

In response to your complaint, the Schools's attorney, David Day, maintains that your first two requests were not reasonably particular. With regard to your first request, Mr. Day takes the position that because your request sought all emails within a particular date range, it failed to identify with reasonable particularity what records you sought and, instead, only sought records based on a particular method of communication. As to your revised request, Mr. Day argues that the Schools are not required to search its records for references to the information that you requested. He also notes that the Schools do not catalog emails by the words contained therein, and no law requires the Schools to do so.

He cites to a previous informal opinion from Counselor Neal, which noted that “[t]he APRA requires retrieval but not research.” *Opinion of the Public Access Counselor 08-INF-23*.

Finally, Mr. Day notes that you have submitted a third request for email records. He states that your third request meets the criteria for reasonable particularity and says that the Schools are in the process of complying with your request.

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. The Schools do not contest that they constitute a “public agency” under the APRA. I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy the Schools’ public records during regular business hours unless the public records are excepted from disclosure as nondisclosable under the APRA. I.C. § 5-14-3-3(a).

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 Counselor Neal noted that “when a public agency cannot ascertain what records a requester is seeking, the request likely has not been made with reasonable particularity.” *Opinion of the Public Access Counselor 08-FC-176*. In an opinion last year, Counselor Neal also noted that email “is a method of communication and not a record,” and that requests for records that identify the records by method of communication only are not reasonably particular. *Opinion of the Public Access Counselor 09-FC-124*. In an earlier opinion, which Counselor Neal affirmed in *09-FC-124*, she reasoned:

If, on the other hand, the request identified the records with particularity enough that the School could determine which records are sought (e.g. all emails from a person to another for a particular date or date range), the School would be obligated to retrieve those records and provide access to them, subject to any exceptions to disclosure.

Informal Opinion of the Public Access Counselor 08-INF-23. Mr. Day is also correct that previous public access counselors have not required public agencies to search through records -- electronically or manually -- to determine what records might contain information responsive to a request. *Id.*; *Opinion of the Public Access Counselor 04-FC-38*. Consequently, it is my opinion that the Schools did not violate the APRA by denying your requests on the basis that they lacked reasonable particularity. See I.C. § 5-14-3-3(a)(1).

CONCLUSION

For the foregoing reasons, it is my opinion that the Schools did not violate the APRA. Further, it is my understanding that the Schools intend to comply with your latest request. I trust this resolves your complaint, but if you believe the Schools' response is not in accord with the standards outlined above, please do not hesitate to contact me.

Best regards,

A handwritten signature in black ink that reads "Andrew J. Kossack". The signature is written in a cursive style with a large, sweeping initial 'A'.

Andrew J. Kossack
Public Access Counselor

Cc: David R. Day