STATE OF INDIANA

MICHAEL R. PENCE, Governor

PUBLIC ACCESS COUNSELOR
JOSEPH B. HOAGE

Indiana Government Center South
402 West Washington Street, Room W470
Indianapolis, Indiana 46204-2745
Telephone: (317) 234-0906
Fax: (317) 233-3091
1-800-228-6013
www.IN.gov/pac

August 16, 2013

Mr. Tom Linkmeyer
c/o Ryan Sink, Counsel
255 North Alabama
Indianapolis, Indiana 46204

Re: Formal Complaint 13-FC-208; Alleged Violation of the Access to Public Records Act by the Lawrence Township School Corporation

Dear Mr. Linkmeyer:

This advisory opinion is in response to your formal complaint alleging the Lawrence Township School Corporation ("School") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq*. Charles R. Rubright, Attorney, responded in writing to your formal complaint. His response is enclosed for your reference.

BACKGROUND

In your formal complaint, you provide that on July 3, 2013, your attorney submitted a written request for records to the School for the following:

(a) The personnel file of Tom Linkmeyer;
(b) From January 1, 2011 until the present, all job descriptions for all positions held by Tom Linkmeyer;
(c) From September 1, 2011, all emails sent and received by Sharon Smith wherein Tom Linkmeyer's name is mentioned, in whole or in part;
(d) From September 1, 2011, all emails sent or received by Concetta Raimondi wherein Tom Linkmeyer's name is mentioned, in whole or in part;
(e) From September 1, 2011, all emails send or received by Denna Renbarger wherein Tom Linkmeyer's name is mentioned, in whole or in part; and
(f) From September 1, 2011, all emails sent and received by Maggie Jones wherein Tom Linkmeyer's name is mentioned, in whole or in part.

On July 10, 2013, the School responded in writing and acknowledged the receipt of your request. The School denied your requests (b) – (f), stating that request failed to identify with reasonably particularity the records sought. In light of prior opinions of the Public Access Counselor, the School maintains it is under no obligation to manually or

electronically search through all of its records to determine what, if any records, might contain information responsive to the request. You believe that your request for email correspondence was made with reasonable particularity, in that you provided a time frame, a sender, receiver, and a specific word to identify the emails. You maintain that you did not make a blanket request for all email correspondence. As to your request for all job descriptions, you believe that the School is well aware of all previous positions you have held and that the request again, was made with reasonable particularity.

In response to your formal complaint, Mr. Rubright advised that the School inadvertently treated your request for all prior job descriptions as a request to search its email correspondence. Since that time, the School has responded and provided copies of the two documents that fall within the scope of your request for all prior job descriptions. As such, the School has now fully complied with your request (b).

As to your request for email correspondence, the School maintains that your request was not made with reasonable particularity. The duty imposed by the APRA is to retrieve documents, not search all documents to ascertain which of the documents contain a certain word or name. The request, if for hard-copy documents, would require the search of every document to ascertain if that document contained a specific name. Said search would be outside of the mandate imposed by the APRA. Even if a search can be conducted electronically, it is still a search. The breadth of the request includes approximately 22 months for any and all email sent or received and does not comply with the statutory requirements of identifying a document with reasonable particularity. The request was made concurrent with a lawsuit filed by Mr. Linkmeyer against the School. While the email search request may comply with the rules of discovery, as applied to the APRA it is too broad.

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* I.C. § 5-14-3-1. The School is a public agency for the purposes of the APRA. *See* I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy the School's public records during regular business hours unless the records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. *See* I.C. § 5-14-3-3(a).

A request for records may be oral or written. *See* I.C. § 5-14-3-3(a); § 5-14-3-9(c). If the request is delivered in person and the agency does not respond within 24 hours, the request is deemed denied. *See* I.C. § 5-14-3-9(a). If the request is delivered by mail or facsimile and the agency does not respond to the request within seven (7) days of receipt, the request is deemed denied. *See* I.C. § 5-14-3-9(b). A response from the public agency could be an acknowledgement that the request has been received and include information regarding how or when the agency intends to comply. Here, the School complied with the requirements of section 9(b) of the APRA in acknowledging the receipt of your request, in writing, within seven days of its receipt.

Section (b) of your request sought a list of all job descriptions for all positions you held with the School from January 1, 2011 to the present. The School has now acknowledged that it inadvertently stated that the request was not made with reasonable particularity and has provided all records responsive to your request. I trust this to be in satisfaction of this part of your formal complaint.

In regards to your request for email correspondence in (c) – (f), the APRA requires that a records request "identify with reasonable particularity the record being requested." I.C. § 5-14-3-3(a)(1). However, because the public policy of the APRA favors disclosure and the burden of proof for nondisclosure is placed on the public agency, if an agency needs clarification of a request, the agency should contact the requester for more information rather than simply denying the request. *See generally* IC 5-14-3-1; *Opinions of the Public Access Counselor 02-FC-13; 05-FC-87; 11-FC-88.* Here, if the School denied your request for failure to identify with reasonable particularity the records that were sought, it violated the APRA. The School's proper response to such a request would be to seek further clarification from you rather than simply denying the request.

Moreover, the Indiana Court of Appeals recently addressed the issue of reasonable particularity as defined under the APRA in *Jent v. Fort Wayne Police Dept.*, 973 N.E.2d 30 (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:

> In response to a request under APRA, a public agency is required to search for, locate, and retrieve records. Depending upon the storage medium, the details provided by the person making the request may or may not enable the agency to locate the records sought. Indeed, here, the FWPD was unable to fulfill the request using the search parameters Jent provided. *Jent*, 973 N.E.2d at 34.

The Court in Anderson held that a request for email correspondence that sought "all emails to and from John Doe from January 1, 2011 to the present" was not reasonably particular. *Anderson*, 983 N.E.2d at 617-619. Specifically:

> Here, Hoage, the Public Access Counselor, defined "[p]articularity" as "the quality or state of being particular as distinguished from universal." Appellant's App. p. 32. For example, a request for emails sent and received by a person in the last one hundred days lacks the particularity required to satisfy the statute and is a "universal" request. *Id.* at 31–33. Hoage also noted that records broadly involving a method of communication such as email did not rise to the level of "reasonable particularity" so as to compel disclosure. *Id.* at 33.
>
> In reaching his conclusion, Hoage relied on prior opinions, inasmuch as this was not the first time that a Public Access Counselor had addressed

> this issue. Additionally, Hoage suggested ways in which Anderson could modify his request noting that "a request for all e-mail correspondence from Jane Doe to Jim Smith for a range of dates would be reasonably particular," whereas "a request for all e-mail correspondence to and from Jane Doe for a range of dates is not reasonably particular." *Id.* Instead, Anderson chose to file suit.
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> The trial court again referenced Hoage's opinion, approving the examples of what would and would not be considered reasonably particular. Additionally, the trial court stated that allowing requests such as Anderson's would permit a "fishing expedition." Appellant's App. p. 4.
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> Moreover, Anderson's requests required that the Commissioners determine which emails were truly public records and which were not. Consequently, even after the Commissioners compiled the emails, they had to undergo a process to ensure that they did not provide protected health information or other non-disclosable material. Tr. p. 53. This process involved turning over the 9500 emails to Human Resources to be redacted, after an IT employee had already spent ten hours and purchased new software for acquiring the emails. *Id.* at 95, 98.
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> Nevertheless, Anderson points out that the "reasonably particular" requirement exists so that the government agency knows what is being requested from the agency. Anderson asserts that the strongest evidence that his requests were reasonably particular is that the Commissioners provided the information that Anderson requested without Anderson modifying his initial requests.
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> Although the Commissioners ultimately spent the time and expense compiling and reviewing 9500 emails, they did not necessarily have a legal obligation to do so, and, as argued above, the Public Access Counselor's opinions state the opposite. To be sure, the fact that the Commissioners provided the information exactly as Anderson requested it does not define the APRA. Indeed, we agree with the Public Access Counselor's opinion that Anderson's requests were not reasonably particular under the APRA, and the Commissioners were under no legal obligation to provide to him the information as he requested. Consequently, this argument fails. *Anderson*, 983 N.E.2d at 617-619.

As opposed to the universal request submitted in *Anderson*, you have sought all email correspondence sent or received from four School employees, from January 1, 2011 to the present that mentions your name, Tom Linkmeyer, in whole or in part. From the plain language of your request, I understand what records have been sought, you have provided a range of dates, and the request enables the School to identify the records that have been requested. The School does not allege that you have failed to provide the proper details in order to allow it to make the electronic search; rather the School has

provided it is not required to conduct a search, in any form, under the APRA. Further, even if the request was deemed to be reasonably particular, the School maintains it was overly broad as submitted. Based on *Jent*, published in 2012 subsequent to the advisory opinions cited by the School, the Court of Appeals has specifically held that an agency would be required to "search for, locate, and retrieve records" in response to a reasonably particular request. *Jent*, 973 N.E.2d at 33-35. It is my opinion that the request was made with reasonable particularity. While I do believe that the request was reasonably particular, you should note that the breadth of the records sought will have a direct impact on the length of time required of the School to collect, review, and produce all records that are responsive.

CONCLUSION

Based on the foregoing, it is my opinion that your request for email correspondence was made with reasonable particularity and in light of *Jent*, the School would be required to search for, locate, and retrieve all records for review that are responsive to the request.

Best regards,

Joseph B. Hoage
Public Access Counselor

cc: Charles Rubright