



# STATE OF INDIANA

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October 11, 2013

Steven J. Porter and Rachel S. Pyle  
211 N. Jackson St.  
Frankfort, IN 46041

*Re: Formal Complaint 13-FC-270; Alleged Violation of the Access to Public Records Act by the Clinton County Commissioners*

Dear Mr. Porter and Ms. Pyle,

This advisory opinion is in response to your formal complaint alleging the Clinton County Board of Commissioners ("Board") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et. seq.* The Board and its legal counsel responded on behalf of the Clinton County Board of Commissioners. Their response is enclosed for your reference. Pursuant to Ind. Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on September 11, 2013.

## BACKGROUND

Your complaint alleges the Clinton County Board of Commissioners violated the Access to Public Records Act by denying your request in violation of Ind. Code § 5-14-3-3(b). You allege that on or about August 9, 2013, you served upon the Board a Public Records Request. You requested emails sent or received from the accounts of three (3) named members of the Board from January 1, 2013 through August 8, 2013 which may have referenced a number of different subject matters.

County personnel responded to you in a timely manner on August 12, 2013, indicating the request was being passed on to the Board and the County Auditor. Subsequently, on August 12, 2013, the Commissioner's Assistant informed you that your request was denied due to lack of reasonable particularity. Your formal complaint was filed on September 11, 2013.

## 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 Ind. Code § 5-14-3-1. The Clinton County Board of Commissioners is a public agency for the purposes of the APRA. See Ind. Code § 5-14-3-2(n)(1). Accordingly, any person has the right to inspect and copy the Board’s public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. See Ind. Code § 5-14- 3-3(a).

A request for records may be oral or written. See Ind. Code § 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 Ind. Code § 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 Ind. Code § 5-14-3-9(b). A response from the public agency could be an acknowledgement the request has been received and information regarding how or when the agency intends to comply.

The issue of reasonable particularity has been addressed on several occasions by the current and previous Public Access Counselors. The common thread running through those opinions is that the reasonable particularity standard is relatively subjective and should be addressed on a case-by-case basis. The APRA requires a records request “identify with reasonable particularity the record being requested.” Ind. Code § 5-14-3-3(a)(1). “Reasonable particularity” is not defined in the APRA, but the public access counselor has repeatedly opined “when a public agency cannot ascertain what records a requester is seeking, the request likely has not been made with reasonable particularity.” Ops. of the Public Access Counselor 10- FC-57; 08-FC-176; 12-FC-13.

This is a unique instance when it appears the original request was indeed made with reasonable particularity even though the public agency states otherwise. You provided the Board a request wherein the emails sought included named persons, specific subject matter and a relatively narrow timeframe. The Board’s denial cites case law and a previous PAC opinion holding the lack of a sender and recipient of an email request is more of a “universal” request rather than particular. In most cases, this would be a correct application of that holding.

The current case is distinguished; however, by the specific subject matter you associated with your request. It is true that *Anderson v. Huntington County Board of Commissioners*, 983 N.E.2<sup>nd</sup> 613 (Ind. App. 2013) held that a request lacked reasonable particularity when the sender **and** recipient of the email were not specifically listed. The referenced case involved over 9500 emails that would need to be gathered and potentially redacted. The present case is distinguishable in the regard the request stated the specific subject matter of the emails sought. The complainant in *Anderson* did not include the subject matter in the request. This narrows the focus of the search considerably and makes the request more palatable. I do not believe this argument runs contrary to the Court of Appeal’s ruling.

To mirror Counselor Hoage's analysis in 12-FC-44 (cited by the Board), email communication is often located in a central server that would make the search for emails easily achievable. It is also true too broad of search parameters would yield a voluminous amount of results that would be unresponsive to a request. Narrowing the search terms would presumably generate a far lesser amount of records. In all probability, it seems likely your request could be accessible with the information you provided to the Board.

This opinion is not to limit a public agency's subjective determination of the ambiguity of a request. Neither is it a rebuke of the Clinton County Board of Commissioners. In fact, the Board should be commended for extending an invitation to re-submit your request with more specificity. This Office has stated previously that 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 requestor for more information rather than simply deny the request.

But despite the efforts the Board took to accommodate your request, it should be recognized the purpose behind the APRA is to promote a transparent and open government. The Board does not indicate the search for the records would actually be overly-daunting or that it would yield an extraordinary amount of records. The Board also never implied disclosing the records would place a significant burden on the operations of the office. At the risk of speculation, it appears as if the Board was capriciously using the reasonable particularity exception to justify withholding the records. That being said, they have demonstrated they are willing to cooperate with you to satisfy your request. I trust the parties involved will continue to work together to share the relevant information.

The Board indicates it may take a significant amount of time to gather and review the records before disclosure. That is a practical and realistic assertion and may very well be the case. The APRA states the public agency has a reasonable amount of time to produce the documents. See Ind. Code § 5-14-3-3(b). However, an important distinction is the reasonable standard in the amount of time to produce is mutually exclusive from the reasonable standard in the particularity requirement of the APRA.

#### CONCLUSION

For the foregoing reasons, it is the Opinion of the Office of the Public Access Counselor the Clinton County Board of Commissioners violated the Access to Public Records Act by denying your request due to the reasonable particularity standard in the APRA.

Regards,

A handwritten signature in black ink, appearing to be 'LHB', written in a cursive style.

Luke H. Britt  
Public Access Counselor

cc: Thomas F. Little, Esq.