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**OPINION OF THE PUBLIC ACCESS COUNSELOR**

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BRYAN WOLFE,  
*Complainant,*

v.

INDIANA STATE POLICE,  
*Respondent.*

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Formal Complaint No.  
23-FC-59

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Luke H. Britt  
Public Access Counselor

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BRITT, opinion of the counselor:

This advisory opinion is in response to the formal complaint alleging the Indiana State Police violated the Access to Public Records Act.<sup>1</sup> Attorney Jeff Pitts filed an answer on behalf of the agency. 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 July 14, 2023.

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<sup>1</sup> Ind. Code § 5-14-3-1-10.

## **BACKGROUND**

In this case we again consider the issue of email searches.

On February 10, 2023, Bryan Wolfe (Complainant) submitted a public records request to the Indiana State Police (ISP) seeking emails from January 2014 to present regarding requests for signage on exit ramps. Wolfe requested emails between any ISP command member or trooper and personnel at the Indiana Department of Transportation (INDOT).

Based on a memo from January 13, 2014, ISP personnel submitted concerns regarding interchange signage to INDOT, which is the agency that installs the signage. INDOT previously told Wolfe that no requests for signage were submitted but he is seeking to confirm with ISP.

ISP replied to Wolfe's request by inviting him to narrow down the scope of his request, including the timeframe. This is largely based on prior guidance from this office that emails should be requested, in most cases, in six month increments to meet the Access to Public Records Act's (APRA) reasonable particularity standard.

Wolfe did break his request down into 19 separate time windows, which he submitted simultaneously. ISP pushed back and argued that his request should be submitted consecutively but not contemporaneously. Wolfe disagrees with ISP's conclusion. As a result, he filed a formal complaint on July 13, 2023.

On August 21, 2023, ISP filed an answer to Wolfe's complaint arguing the agency's position is consistent with prior guidance from this office. ISP also emphasizes that the potential sender and receiver was not specific enough because

Wolfe did not name any individual, but rather personnel generally.

## ANALYSIS

### 1. The Access to Public Records Act

The Access to Public Records Act (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.” Ind. Code § 5-14-3-1. The Indiana State Police is a public agency for purposes of APRA; and therefore, subject to its requirements. *See* Ind. Code § 5-14-3-2(q). As a result, unless an exception applies, any person has the right to inspect and copy ISP’s public records during regular business hours. Ind. Code § 5-14-3-3(a).

Indeed, APRA contains mandatory exemptions and discretionary exceptions to the general rule of disclosure. *See* Ind. Code § 5-14-3-4(a) to -(b).

This case involves a dispute over APRA’s reasonable particularity standard as it applies to requests for emails.

### 2. Reasonable particularity of email requests

This office has addressed the issue of specificity as it relates to requests for email *ad nauseum*. This office processed Wolfe’s complaint not for the underlying merit of his argument, but rather for an opportunity for this office to provide some additional commentary on the matter.

For the uninitiated, under APRA, all requests for public records must identify with reasonable particularity the records

being requested. Ind. Code § 5-14-3-3(a)(1). Notably, the term “reasonable particularity” is not statutorily defined.

Toward that end, this office has formulated a recipe for requests for email messages with four ingredients: (1) a named sender; (2) a named recipient; (3) reasonable timeframe (e.g., six months or less); and (4) a subject matter or set of unique yet connected key words.

This is not an absolute elemental test, necessarily, and the robustness of some ingredients can make up for the lack of others in certain contexts. Nonetheless, this office is tasked with interpreting undefined terms in the public access statutes, and that is how we have interpreted reasonable particularity for requests for emails.

Simply put, Wolfe’s request was too broad. It was admittedly seeking to prove—at least in part—the existence of a negative and not a known email. Additionally, the request was seeking records well outside the three-year retention schedule for emails.<sup>2</sup> ISP’s response was appropriate in context.

Wolfe, however, raises additional points that are ripe for discussion here. He suggests elements surrounding search parameters for emails established by this office are “significantly more cumbersome and administratively ridiculous” and “arbitrarily created.”

Truth be told, most email requests are based on hunches that an email *might* exist. They frequently do not seek a tangible record like a budget, a contract, incident report, or an invoice. Rather, they pursue a theoretical document, which

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<sup>2</sup> <https://www.in.gov/iara/files/gr.pdf> at GRADM-4

may have been transmitted along a method of communication that simply did not exist when APRA was written.

But while some agencies, including this office, have wrongfully dismissed email requests pejoratively as “fishing expeditions,” narrowly tailored email requests have value in the public access world.

When APRA was promulgated in 1983, email was still close to twenty years away from ubiquity. Emails were simply not a part of public business. Communication happened face-to-face or telephonically. Those conversations were rarely recorded, and discussions were not memorialized in the same way they are now. Memos, positions statements, white papers, etc. were disclosable—as they are now—but day-to-day communication was not transcribed.

But even now, the legislature has not updated APRA to explicitly reference email communication in any meaningful way. Instead, it has acquiesced to the courts and this office to interpret what “reasonable particularity” means regarding email.

The courts have taken a single swipe at defining reasonable particularity as it relates to requests for emails. In *Anderson v. Huntington County Bd. of Com’rs*,<sup>3</sup> the Indiana Court of Appeals ratified a former PAC’s position that an identified sender and recipient of an email was necessary for a request to satisfy APRA’s reasonable particularity standard.

Over the decade since, this office has attempted to balance public access with practicality. The addition of a concise

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<sup>3</sup> 983 N.E.2d 613 (Ind. Ct. App. 2013).

timeframe and subject matter seemed to be common sense considerations.

These four components are suggested because “reasonable particularity” implies some sort of objective standard is necessary. This office recognizes there is no one-size-fits-all answer when it comes to reasonable particularity in the context of requests for emails.

As a result, we analyze them on a case-by-case basis with some flexibility. Nonetheless, some guideposts must exist to give both requesters and agencies some kind of roadmap to meet a reasonable, practical standard. The legend of that map includes identified senders and recipients by name or position, subject matter, and a concise timeframe.

Anyone who suggests the exercise of searching for emails is merely just an exercise involving a few keystrokes and a perfunctory review in curating the fulfillment of a request is not familiar with the moving parts of a large government agency.

Until this office hears otherwise from the legislature or a court with binding authority that our interpretation and approach is wrongheaded, we see no reason to depart from the four factors as objective, yet flexible, standards for email requests.

## CONCLUSION

Based on the foregoing, it is the opinion of this office that the Indiana State Police did not violate the Access to Public Records Act.

A handwritten signature in black ink, appearing to read 'LHB', is positioned above the name of the Public Access Counselor.

Luke H. Britt  
Public Access Counselor

Issued: October 24, 2023