STATE OF INDIANA

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January 14, 2014

Mr. Sèamus Boyce
c/o Church, Church, Hittle & Antrim
Two North Ninth, P.O. Box 10
Noblesville, IN 46061

Re: Informal Inquiry 13-INF-68; Reasonable Particularity of Emails

Dear Mr. Boyce:

This is in response to your informal inquiry regarding a records request which yielded a voluminous amount of email correspondence. Pursuant to Ind. Code § 5-14-4-10(5), I issue the following informal opinion in response to your inquiry. My opinion is based on applicable provisions of the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* and Ind. Code § 6-1.1-35 *et. seq*.[1]

BACKGROUND

On October 22, 2013 a public records request was served upon your client ("School") seeking emails between any of the School's employees and two specific third party email addresses from January 1, 2013 – present.

After asking the requesting party to narrow the parameters of the request, the party revised the request seeking all emails with the third party addresses as sender, recipient or a blind copy recipient. The narrowing of the request merely attached a file with the names of over 500 teachers at the School to satisfy reasonable particularity.

Your contention is although the sender, recipient, and date range is identified, the request still does not meet the definition of "reasonable particularity" as intended by the APRA. Your inquiry seeks additional guidance on the matter above and beyond Opinions written by previous Public Access Counselors.

ANALYSIS

[1] Please note that this informal opinion is being consolidated with your request for an Advisory Opinion. As an Advisory Opinion is only triggered by a formal complaint, I have combined the two requests.

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. Public higher education institutions in Indiana are public agencies for the purposes of the APRA. *See* Ind. Code § 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 non-disclosable under the APRA. *See* Ind. Code § 5-14-3-3(a).

Under the APRA, all requests must be reasonably particular in order for the public agency to locate, retrieve and produce records responsive to the request. *See* Ind. Code § 5-14-3-3(a). The courts have addressed this issue in two seminal cases which will be discussed below. You also contend that the request as written is voluminous to the point of being burdensome and that your client, a public agency, should not be expected to produce such a document without the request being narrowed down to a manageable size.

Email requests generally present a number of problematic challenges for a public agency. Given the sheer amount of electronic data on an email server, a voluminous request could take a significant amount of time to produce. While technology has evolved to make searches more practical with the ability to key in on key word hits or parameters, the agency still has to cull those records which are protected from disclosure under other APRA exceptions. And so it is in your current circumstance. A requestor has served upon your client emails from 500 named individuals.

Although not defined in the APRA, the Indiana Court of Appeals addressed the issue of reasonable particularity in 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:

> Whether a request identifies with reasonable particularity the record being requested turns, in part, on whether the person making the request provides the agency with information that enables the agency to search for, locate, and retrieve the records.
>
> …a requested item has been designated with 'reasonable particularity' if the request enables the subpoenaed party to identify what is sought and enables the trial court to determine whether there has been sufficient compliance with the request.

The factual circumstances in *Anderson* and *Jent* are distinguished from your situation due to the sheer amount of information requested. For example, the email request in Anderson only contained four names and still yielded 9500 results.

Reasonably particular and reasonably practical are two different standards, but they do have a nexus rooted in common sense. Strictly following the *Jent* ruling, a request stating "I want all records in Room 204 of the County Courthouse" would also meet the reasonable particularity standard because the County Clerk knows exactly where to search for and locate those requested records. While I do not find the argument

compelling that a request is "burdensome", I do give credence to the notion that a request can be untenable.

Consider the definition of particularity in The New International Webster's Dictionary and Thesaurus, Encyclopedic Ed., 200: "exactitude in description; circumstantiality; strict or careful attention to detail; fastidiousness." I do believe that voluminous records requests can meet that standard and agencies are required to satisfy voluminous requests, but to meet the reasonable particularity standard, they cannot be blanket requests. I find that even though the sender and recipients are named, a list of 500 individuals alone is not reasonably particular. On its face, a public agency can make that determination *before* searching.

In a large request such as this, with the addition of recipient and sender and a timeframe, there should also be a list of key words or search terms to narrow the scope of the search. As I have held previously in 13-FC-270, email located on a centralized server can be searched with relative ease by an IT professional. A school the size of your client can likely run a search based on the request, but also be at a loss as to what records to actually produce.

What is more, Section 7 of the APRA requires a public agency to regulate any material interference with the regular discharge of the functions or duties of the public agency or public employees. Ind. Code §5-14-3-7(a). However, section 7 does not operate to deny to any person the rights secured by Section 3 of the APRA. I.C. §5-14-3-7(c). Thus, under section 7, the School should not permit employees to neglect their essential duties in order to respond to public records requests, but the School cannot simply ignore requests either. You have indicated that you have had discussions with the requestor to narrow the search at lease once. This is the appropriate course of action and I would suggest that you continue to work with the requestor to narrow it down even more to produce records responsive to his request.

It has been brought to my attention that the requestor has suggested that the School run a search of 100 individual email accounts a week for five weeks to satisfy his request. That timeframe may or may not be a reasonable time based on the School's resources and is not an edict I can enforce. A better course of action is to collaborate and agree on more manageable search terms.

Reasonable particularity is a case-by-case standard. I do not believe that one definition can apply to all circumstances. It is a subjective determination. While all 500 email accounts are public record, it is not beyond the bounds of reason to ask him to provide additional search terms to focus the search. It is my opinion that the request, as written, is not reasonably particular.

Please do not hesitate to contact me with any further questions.

Best regards,

Luke H. Britt
Public Access Counselor