



STATE OF INDIANA

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Via email transmission

October 18, 2016

Mr. Adam Kirsch

Re: Informal Inquiry 16-INF-26; Timely production of records

Dear Mr. Kirsch:

This is in response to your informal inquiry regarding whether Yorktown Community School's ("School") delay in production of public records is a violation of the Access to Public Records Act ("APRA").

BACKGROUND

You seek a determination as to whether the Yorktown's pattern of behavior constitutes undue delay in production of public records. On or about June 20, 2016, you contacted Yorktown Schools with a public records request subsequently acknowledged by the School's business manager ("Manager") and indicating a search had begun. On July 5, 2016, the Manager emailed you stating you would receive another update in two (2) weeks. The requests were for the following:

1. Emails of Jennifer McCormick to/from Trent McCormick or Tony Bennett from January 1, 2013 to present.
2. Emails of Jennifer McCormick to/from any email at any of the following domains: @doe.in.gov, @ingop.org, @indiana.gop, @hathawaystrategies.com, @IHSAA.org, or @sboe.in.gov from January 1, 2013 to present.
3. Emails of Jennifer McCormick containing any of the following terms or names: "bingo", "Heistand", "Ritz", "Pence", "Bennett", "wrestling", or "lawsuit" from January 1, 2013 to present.

On July 19, 2016 you emailed asking for an update and the Manager responded that a batch of records would be available in two (2) weeks. You also indicated you wished the files to be transmitted to you electronically. On July 28, 2016 the first sets of records were sent for the year 2014; on August 17, 2016, the second set of records were sent for 2015. The Manager indicated the next set would be available on August 30, 2016; and you inquired about the number of sets she anticipated to send, but received no response.

Per the telephone conversation with Manager on September 1, 2016, she indicated the records were still being searched. You believe Yorktown Schools is intentionally delaying production of records, because the superintendent is a candidate for public office.

This Office invited the School to respond to your inquiry on September 13, 2016; however, the School has declined to do so.

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 Indiana Code § 5-14-3-1*.

“Within a reasonable time after the request is received by the agency, the public agency shall either provide the requested copies to the person making the request...” *See Indiana Code 5-14-3-3 (b)(1)*. It appears Yorktown is taking the steps to retrieve requested information; however, the fact remains it had taken several months as of the filing of your complaint to retrieve just a portion of the requested records.

On its face, your public records request appears to lack a certain degree of specificity required by the APRA and the Indiana Court of Appeals in *Anderson v. Huntington County Bd. of Com'rs.*, 983 N.E.2d 613 (Ind. Ct. App. 2013). This Office has previously issued opinions related to reasonable particularity with emails. In *Informal Opinion 15-INF-26*, I stated that requests for emails should have “a named sender, recipient, date range (preferably six months or less) and a set of key words” to meet reasonable particularity. A concise subject matter description could also substitute for key words. While a data range which is broader than six (6) months is not grounds for denial, a lack of a named sender or recipient or search terms does show a request lacks reasonable particularity. Requests lacking these items can turn into a voluminous information dump and be a burden for both the requestor and the public agency. *See also Jent v. Fort Wayne Police Dept.*, 973 N.E.2d 30 (Ind. Ct. App. 2012).

These are mere guidelines; however, and a public agency can accept a public records request which does not meet every single search parameter listed above. Therefore, the School did not deny your request and instead undertook the task of searching for and gathering the records sought. By doing so, the School availed itself of the responsibility of being timely pursuant to Indiana Code § 5-14-3-3.

As I have stated in the past, when agencies are faced with a voluminous request – reasonably particular or not – the best course of action is to release available records in a piecemeal manner as they become available instead of waiting until they are all compiled. If this is not possible, then alternatively an agency should be in semi-regular contact with the requestor to assure them the task is still at hand and the request has not been dropped.

What constitutes “reasonable” varies on a case-by-case basis. Some public records should only take a day or two to produce; some may even be produced immediately. But in the cases of a larger request, it can take a great deal of time to search for, curate and produce. It appears as if this is only of those larger requests. A public agency does not have to compromise the regular discharge of its duties to attend to a public records request. That being said, it is my expectation a public agency also devote the appropriate

amount time and resources to the production of documents, in order that a request may be fulfilled within a reasonable time. It should be integrated into the course of its duties.

It appears Yorktown has done many of these things despite being asked for nearly three (3) years-worth of emails – some of which do not contain a named recipient, but rather domain names. I cannot say definitively the School has taken too long, because simply, I do not know how many emails were generated by the search. For example, the email search in the *Anderson* case cited above yielded 9500 emails for four (4) individuals in a six-month time frame. *Id.* at 616. It is possible the second and third parts of your request would yield a voluminous amount as well. Without the benefit of a response from the School, it is impossible to tell what has justified the delay. You have indicated that since you filed your request for an informal opinion with this Office, you have received an additional batch, as well. It is my sincere hope this trend continues and you get the records you are seeking.

Please do not hesitate to contact me with any questions.

Best regards,

A handwritten signature in black ink, appearing to read 'LHB', with a long horizontal flourish extending to the left.

Luke H. Britt
Public Access Counselor