



# STATE OF INDIANA

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Office of the Auditor of State of Indiana

Courtney L. Schaafsma, Chief of Staff

200 W. Washington St. Suite 240

Indianapolis, IN 46204

VIA EMAIL: [coschaafsma@auditor.in.gov](mailto:coschaafsma@auditor.in.gov)

**RE: 23-INF-8; Reasonable particularity and personnel file information**

Dear Ms. Schaafsma,

This informal opinion concerns a request submitted to the Office of the Auditor for information on the entirety of the Indiana state employee roster, including select past employees.

## BACKGROUND

On March 23, 2023, a requester submitted a public records request for the following:

- Any payment to the employee from the state that is NOT payroll.
- Any settlement agreement, judicial order or other documents provided to the AOS that pertains to that employee and/or was the source document that ordered the AOS to generate a payment.
- Any emails, documents, recordings, transcripts and phone logs that pertain to instructions from any source relating to these payments. (e.g. you were sent an email from xyz agency head instructing you on how to pay abc employee for pdq settlement arrangement)
- Any payments to the employee for education reimbursement, tuition payment, classroom fee reimbursement, or travel expense related to education.
- Confirmation or not that any payments for education related expenses beyond \$5250 were correctly attributed to that employees W2 for that year.

The requester included a list of ten former employees, but also attached a 192-page document with a list of the entirety of the State of Indiana employee directory.

In response to prior requests, you cited reasonable particularity as an issue prohibiting a search for these items. This was met with pushback from the requester, even after explaining that the Access to Public Records Act does indeed contain a prohibition on seeking information from groups of employees generally. You invited to narrow the scope of the search, however, the requester responded by attaching the list of 40,000 state employees and accused your office of playing “games”.

You seek clarification as to whether this is the type of request agencies are obligated to fulfill. Specifically, you ask whether the request meets the standard of reasonable particularity and whether the attachment of the State of Indiana Telephone Directory constitutes a request for personnel information on groups of employees.

## 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 Office of the Indiana Auditor of State is a public agency for purposes of APRA; and therefore, subject to the law’s 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 the Auditor’s public records during regular business hours. Ind. Code § 5-14-3-3(a).

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

This case involves the applicability of the reasonable particularity language found at Indiana code section 5-14-3-3(a)(1) and the personnel file exception at Indiana code section 5-14-3-4(b)(8).

#### 1.1 Reasonable particularity

While standard rules of statutory instruction teach us that both statutes are to be read harmoniously,<sup>1</sup> we will consider the more general statute first.

Under APRA, a request for inspection or copying “must identify with reasonable particularity the record being requested.” Ind. Code § 5-14-3-3(a)(1). Requiring reasonable particularity relieves a public agency from the guesswork of having to anticipate

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<sup>1</sup> *Burd Mgmt., LLC v. State*, 831 N.E.2d 104, 108 (Ind. 2005).

exactly what a requester is seeking. To borrow an idiom from our colleagues at the Hoosier State Press Association, a request should be more like a rifle less like that of a shotgun.

Although “reasonable particularity” is not statutorily defined, we take our cues from a number of authorities. The courts have likened reasonable particularity in the APRA with a similar provision in the court discovery rules<sup>2</sup>. Significantly broader than the public access laws, the trial rules also cite specificity as an inherent concept parties must consider.

Like the courts, this office will strive to give meaning to each and every word in statutes because it will not be presumed that the legislature intended to enact a statutory provision that is superfluous, meaningless, or a nullity<sup>3</sup>. And so, it is with reasonable particularity of public records requests – the term must mean something.

What is more, courts also defer to the practicality of a public records request.<sup>4</sup> The APRA speaks to this as well: “A public agency shall ... regulate any material interference with the regular discharge of the functions or duties of the public agency or public employees.”<sup>5</sup>

Although this office takes a liberal approach to the public records process, we attempt to protect the fidelity of access by defending against unreasonable or oppressive submissions, similar to how courts guard discovery issues. Although broad, the access laws are not all inclusive.

## **1.2 Personnel information**

More specifically, however, the APRA has an express prohibition against requests seeking information generally on all employees or for groups of employees without the request being particularized by name<sup>6</sup>. Here the inquiry

Any kind of financial transaction between a public agency and an employee should be categorized as compensation. Therefore, should there be a settlement agreement between those two parties, it is disclosable. The condition precedent to disclosure, however, is a modicum of specificity.

Here, when this statutory language of reasonable particularity was invoked, the requester accused you of playing “games” and responded by the attaching the entirety of the state employee directory in a seemingly retaliatory manner. Despite the requester’s indignation, your response was actual and literal compliance with the black letter law, of

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<sup>2</sup> *Jent v. Fort Wayne Police Dep’t.*, 973 N.E.2d 30 (Ind.Ct.App.2012) (referencing *In re: WTHR-TV*, 693 N.E.2d 1, 6 (Ind.1998)).

<sup>3</sup> *Hamilton Square Inv., LLC v. Hamilton County Assessor*, 60 N.E.3d 313 (Tax Ct. of Ind.).

<sup>4</sup> *Smith v. State*, 873 N.E.2d 197, 201 (Ind. Ct. App. 2007).

<sup>5</sup> Ind. Code § 5-14-3-7(a).

<sup>6</sup> Ind. Code § 5-14-3-4(b)(8).

which there is no exception this office is aware. Seeking every single settlement agreement (and other information) all at once for the entire workforce is not consistent with what the law contemplates.

Based on the information provided – including an 89-point itemization log of every single contact with the requester as of the time of this inquiry – the Auditor’s office has gone above and beyond in responding to the requester’s submission. The rules apply universally and if a requester is unwilling to tailor a request into something practical and reasonable, they are not statutorily entitled to access.

As a final matter, this office is typically loathe to use the idiom of a “fishing expedition” in relation to a public records request. Nonetheless, the turn of phrase has some utility if expressed correctly: it is one thing to fish with a rod and reel, baited with the correct lure; it is another thing altogether to cast out a wide net behind a trawler. The latter appears to be the case here.

APRA is simply not intended to comprehend wide-ranging audits of every conceivable document that may or may not be germane to a requester’s curiosity. It is designed to ask for a specific document, attached to a specific employee or set of circumstances. To interpret the law otherwise is not rooted in any recognized authority or policy. The telephone directory is not a document specific enough to qualify as reasonable particularity under APRA.

### **CONCLUSION**

It is the opinion of this office that the request does not satisfy APRA’s reasonably particularity requirement. The requester needs to significantly narrow the request before the Auditor’s office is obligated to take additional action. Moreover, the submission of the State of Indiana telephone directory constitutes a request for personnel information on all employees or groups of employees under Indiana Code section 5-14-3-4(b)(8) and would be statutorily prohibited.



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