



STATE OF INDIANA

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State of Indiana
Office of the Governor
State House, Second Floor
Indianapolis, IN 46204

*Re: Informal Inquiry 15-INF-24; Disclosure of Constituent
Communications by the Governor's Office*

Dear Mr. Ahearn:

Please allow this letter as a response to your informal inquiry regarding the disclosure of constituent communications by the Governor's Office.

Recently, the Governor's Office received the following request for public records:

Any and all constituent emails, letters, phone messages, and other correspondence to Gov. Mike Pence or the office from March 1, 2015 to present. This would also include from out-of-state sources.

Your question is whether there is any legal authority which allows the Governor's Office to redact identifying information of the constituents; specifically you seek to ascertain whether information such as, a name, social security number, phone, email, etc., can be redacted. Additionally, you inquire as to whether the purpose of a request for constituent communication may be required by the Governor's Office in order to determine if the information may be misused by a requestor.

Your concern is that disclosure of communication from constituents to the Governor may chill open exchanges due to an expectation of privacy. Ostensibly, constituents communicate sensitive information in their correspondence. The Governor's Office seeks to mitigate any potential harm done by disclosing these documents.

Public record is defined by Ind. Code § 5-14-3-2(o) as "any writing, paper, report, study, map, photograph, book, card, tape recording, or other material that is created, **received**, retained, maintained, **or filed by or with** a public agency." Emphasis added. The Governor's Office is a public agency pursuant to Ind. Code § 5-14-3-2(n). Therefore any

documented communication, i.e. emails, letters, etc. are public record potentially subject to disclosure.

Public official-constituent privilege is not recognized by Indiana Code or the judiciary. When constituents avail themselves of communicating to a public official in writing, the expectation is that such correspondence may ultimately be subject to public scrutiny. That said, there are many elements of public records that may be redacted under Ind. Code § 5-14-3-4 et. al. Redaction is specific to the record and - in many cases - the requestor. Generally speaking, however, the identifying information of a constituent is disclosable public record. Only social security numbers could be universally redacted under the aforementioned request. See Ind. Code § 5-14-3-4(a)(12).

Similarly, while Ind. Code § 5-14-3-3(a) states that “no request may be denied because the person making the request refuses to state the purpose of the request”, there are very limited circumstances when a requester must affirm that the information will not be used for political or commercial purposes. These situations are outliers, however, and would likely not be germane to the above request. Those narrow circumstances notwithstanding, there is no legal authority by which the Governor’s Office can require a requester to state the purpose of a request.

Finally, it should be noted that the request as written would not, in my opinion, meet the reasonable particularity standard set forth in Ind. Code § 5-14-3-3(a). The request is universal in nature and does not identify a particular document or even a set of documents. While a request does not have to isolate a record with pinpoint accuracy, it should be specific enough to allow the public agency to readily find a document. Reasonable particularity has not been defined under the Access to Public Records Act or the courts, however, it has been anecdotally compared to the reasonable particularity requirement in Indiana Rule of Trial Procedure 34(B).

In the words of the Court in *Crawford v. State*, 948 N.E.2d 1165 (2011):

The particularity showing serves a gatekeeping function to the discoverability of information. We require that an item be designated with reasonable particularity for several reasons. It enables the subpoenaed party to identify what is being sought and the trial court to determine whether there has been sufficient compliance with the request, and it prohibits the requesting party from engaging in an impermissible "fishing expedition." [W]hat constitutes reasonable particularity 'will depend on the facts of each individual case, the crime charged, the nature of the items sought to be discovered, the degree of discovery of other items of information, the nature of the defense, etc. In general, the particularity requirement demands something more precise than "'give me everything related to the case.'

In the present instance, the requester should have identified a named constituent and, at the very least, the subject matter of the communication sought. As it stands, it does not appear to be a sufficiently specific request. If the request was narrowed considerably,

however, the Governor's Office would be obligated to provide documents responsive to the request.

Best regards,

A handwritten signature in black ink, appearing to read 'LH Britt', with a long, sweeping underline.

Luke H. Britt
Public Access Counselor