



STATE OF INDIANA

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May 4, 2016

Mr. Krzysztof Rudzinski
304 South Jones Boulevard
Suite 174
Las Vegas, Nevada 89107

Re: Formal Complaint 16-FC-60; Alleged Violation of the Access to Public Records Act by the Michigan City Area Schools (Consolidated)

Dear Mr. Rudzinski:

This advisory opinion is in response to your formal complaint alleging the Michigan City Area Schools ("MCAS") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 et. seq. MCAS has responded via Mr. Nicholas Otis, Esq. His response is enclosed for your review. Pursuant to Ind. Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on March 16, 2016.

BACKGROUND

Your complaint dated March 16, 2016, alleges MCAS violated the APRA by improperly denying your records request and by failing to provide all records responsive to your request.

On February 22, 2016, you requested records regarding an MCAS employee. MCAS acknowledged your request the same day. On March 3, 2016, MCAS provided you with records, but you contend the records are incomplete.

On March 7, 2016, you submitted a revised request for records, seeking emails between 17 named individuals who worked for MCAS. Your original request form listed a range of dates for the emails but failed to list search terms. At the request of MCAS, you amended your request with over 50 search terms.

On March 28, 2016 MCAS responded. MCAS notes you are seeking emails from a period of 18 months and contends you failed to properly narrow your request.

DISCUSSION

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*. The Michigan City Area Schools is a public agency for the purposes of the APRA. *See Ind. Code § 5-14-3-2(n)(1)*. Accordingly, any person has the right to inspect and copy MCAS’s disclosable public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. *See Ind. Code § 5-14-3-3(a)*.

A request for records may be oral or written. *See Ind. Code § 5-14-3-3(a); § 5-14-3-9(c)*. If the request is delivered by mail or facsimile and the agency does not respond to the request within seven (7) days of receipt, the request is deemed denied. *See Ind. Code § 5-14-3-9(b)*. A response from the public agency could be an acknowledgement the request has been received and information regarding how or when the agency intends to comply.

Under Ind. Code 5-14-3-3(a)(1), “a request for inspection or copying must identify with reasonable particularity the record being requested.” Reasonable particularity is not defined under the APRA. If the public agency cannot determine what records to seek then your request is determined to have lack of reasonable particularity. **A public agency is not required to fulfill a request which lacks reasonable particularity.**

Emphasis added.

MCAS properly acknowledged your requests and provided documentation regarding your February 22, 2016 request. However, you contend MCAS has not disclosed all records because the records provided were not sufficient to provide the information you sought.

You requested records sufficient to show sign in, sign out, and physical location during work times for an individual employee. However, this request lacked reasonable particularity, because you had not requested a specific document and instead left it to the discretion of MCAS to provide you with records which may or may not satisfy your curiosity. A records request does not state what is expected to be found in the records. Instead, it states the name or description of the records.

You contend MCAS failed to provide the records requested. If MCAS failed to provide you with all of the documents you requested, this is likely because your request lacked reasonable particularity and the Department could not determine the scope of your request.

Your second complaint is that MCAS improperly denied your request for staff emails as lacking reasonable particularity. It is my determination that your request is deficient. I have stated in previous opinions the standards for reasonable particularity of emails, which includes the sender and receiver of the emails, a timeframe the emails were sent and a list of search terms.

Originally, your request lacked search terms. It was therefore lacking reasonable particularity. You amended your request with over 50 search terms, several of which were not true search terms, but instead were mere articles or pronouns. It should be noted terms such as “a”, “the”, “my”, “he”, “she”, “her”, “it” and “this” are

not search terms. Articles and pronouns do not serve in any way to narrow the scope of the records sought. Search terms can be names, places, or even words like “meeting” and “report”; however, the fact that you have provided so many extraneous terms raises the inference you are not seeking records and are only on a fishing expedition. Because your search terms were too generic, your request lacked reasonable particularity. While a public agency may not deny records because you fail to state the purpose of your request, it certainly helps to identify a subject matter when asking for such a large swath of records.

Indiana Courts have addressed reasonable particularity on occasions – specifically in terms of email. The Courts have noted the large amount of documents which even a small search can yield. There is nothing wrong with a voluminous request as long it meets common sense standards of specificity. In my experience, email searches start small – with a sender or recipient or two – and branch out from there. My recommendation is that you reign in your search initially and keep going in phases. This saves time for everyone involved as your first few searches may yield the information you are seeking.

While access to public records is certainly an integral part of a School’s activities, it is not their sole responsibility. Working with you to narrow your request and keep it to a tenable task is not acting in bad faith, it is simply trying to be as efficient as possible with its resources. Nothing in the materials provided suggests the School is trying to “hide something”. In my opinion, they are trying to save time by providing you with the parameters to get you exactly what you want, instead of reams of extraneous and superfluous documents.

Please do not hesitate to contact me with any inquiries.

Regards,

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

Luke H. Britt
Public Access Counselor

Cc: Mr. Nicholas Otis, Esq.