



# STATE OF INDIANA

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## OPINION OF THE PUBLIC ACCESS COUNSELOR

KRZYSZTOF RUDZINSKI )

Complainant )

v. )

MICHIGAN CITY AREA SCHOOLS )

Respondent )

17-FC-02

### ADVISORY OPINION FEBRUARY 19, 2017

This advisory opinion is in response to your formal complaint alleging the Michigan City Area Schools ("School") violated the Access to Public Records Act ("APRA"), Indiana Code § 5-14-3-1 *et. seq.* The School responded to the complaint via Mr. Nicholas T. Otis, Esq. His response is enclosed for review. Pursuant to Indiana Code § 5-14-5-10, I issue the following opinion to the formal complaint received by the Office of the Public Access Counselor on January 9, 2015.

#### BACKGROUND

The complaint dated January 9, 2016, alleges the School has violated the APRA by not providing the Complainant with documents requested.

On October 23, 2016 and again on November 6, 2016, the Complainant submitted a written request to the School for the complete personnel file of a named employee. After the production of a certain amount of information, the Complainant followed up notifying the School of an alleged deficiency in the produced documents. Namely, the employee's compensation, education and training, previous work experience and any known formal charges against the employee were missing. The Complainant ultimately takes exception to the omission of salary documentation for the employee as the primary basis for this complaint.



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The School's attorney, Mr. Otis, stated in a separate email the employee's salary. The Complainant does not accept this as an adequate public records response. He considers the act of stating the compensation in an email "hearsay" and demands what he deems would be a better record. Education and training background were also not disclosed. The Complainant considers this malfeasance and a willful violation of the law.

The Respondent School argues two (2) primary points in its response to the formal complaint. The first is that the attorney's email serves as a sufficient answer to the Complainant's request for information. The Complainant did not identify a record with specificity, but rather requested the "complete personnel file" of the employee. The APRA only requires the disclosure of certain information from the personnel file and the School exercised the discretion to withhold a portion not germane to the Complainant's request. Secondly, the documents pertaining to education and training background do not exist according to the School. Therefore, the School is under no obligation to produce or create records which do not exist.

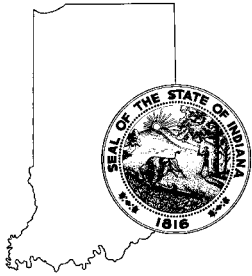
## ANALYSIS

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

### *Attorney Emails*

Using the Complainant's own reasoning, the email from the School's attorney stating the employee's salary is public record. As the Complainant states in his formal complaint, a public record is "any writing...created...by a public agency...regardless of form or characteristics." There is no question the attorney speaks on behalf of the School when he is responding in his official capacity as School Corporation counsel. As an agent of the School, any documentation put down in writing, whether it be in an email response or otherwise, becomes a public record. Therefore, the School has satisfied its burden of providing the compensation of an employee under Indiana Code § 5-14-3-4(b)(8).

Undoubtedly, there is a "more official" record than the attorney's email. I am confident there would be a payroll record, compensation report, human resources staff salary printout, or similarly-named document



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expressing the employee's salary. But based on the information provided, the Complainant simply did not ask for such a record with reasonable particularity. He merely asked for the complete personnel file. There are only portions of a public employee's personnel file a public agency must disclose to the public upon request. An agency cannot guess what document may or may not satisfy a requester's public record inquiry. Despite this, see the "Conclusion" for my recommendations. A request must be reasonably particular pursuant to Indiana Code § 5-14-3-3. Although a record does not have to be identified with pinpoint accuracy, the public must generally name a document and it will be provided or else properly denied. In any case, there is a substantial likelihood the employee's compensation will be listed on the Indiana Transparency Portal Gateway in the public employee salary database for the School.

### ***Education and Training Documentation***

I certainly share the Complainant's vexation as to why the employee's education and training records are missing from the personnel file. However, it is not the function of this Office to question whether a record should exist, only to demand disclosure of the documentation if it does exist. To my knowledge, I am not definitively aware of any law which mandates a School collect education and training background, but it certainly stands to reason the Complainant's presumption is reasonable. That presumption aside, I can only interpret the law to require disclosure if the School has received that particular information.

### **CONCLUSION**

Based on the foregoing, it is the Opinion of the Public Access Counselor the Michigan City Area Schools has not violated the Access to Public Records Act if education and training background documentation does not exist. I do request the School provide the Complainant with a payroll or human resources document stating compensation for the individual in question.



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A handwritten signature in black ink, appearing to read "LH Britt", written in a cursive style.

Luke H. Britt  
Public Access Counselor

Distribution:

Mr. Nicholas Otis, Esq.