
OPINION OF THE PUBLIC ACCESS COUNSELOR

JOSHUA A. HOLLAND

Complainant,

v.

SOUTH DEARBORN COMMUNITY SCHOOL CORP.,

Respondent.

Formal Complaint No.

21-FC-176

Luke H. Britt

Public Access Counselor

BRITT, opinion of the counselor:

This advisory opinion is in response to a formal complaint alleging the South Dearborn Community School Corporation violated the Access to Public Records Act.¹ Superintendent Eric Lows submitted statement on behalf of the school. In accordance with 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 October 27, 2021.

¹ Ind. Code § 5-14-3-1 to -10.

BACKGROUND

This case presents the issue of whether the South Dearborn Community School Corporation (SDCSC) violated the Access to Public Records Act (APRA) by denying a former school board member's request for access to the entirety of his official email account after leaving office.

On October 25, 2021, Joshua Holland (Complainant), a former school board member, filed a public records request with the South Dearborn Community School Corporation seeking the following: "... access to the school server for the email address of josh.holland@sdsc.k12.in.us."

That same day, after Holland spoke to SDCSC's business manager, the school corporation denied his request.

On October 26, 2021, after speaking with this office, Holland filed a formal complaint against SDCSC with this office and a second records request with the school corporation asking for all messages from both the inbox and sent folder for the email address of josh.holland@sdsc.k12.in.us.

SDCSC responded to Holland's complaint arguing that it is the corporation's policy to terminate a board member's access to their official email account upon departure from the board. Regarding Holland's first request, SDCSC stands by its decision to deny access to the school corporation's server because it contains confidential information like student records and employee health records, which are protected under federal law. SDCSC asserts that Holland no longer has legal authority to access confidential information because he is no longer a member of the SDCSC Board of Trustees.

Regarding Holland's second request, SDCSC maintains that simply asking for all the emails from the inbox and sent folder from his official account does not meet the threshold of reasonable particularity as required by APRA.

SDCSC contends that it offered Holland the opportunity to narrow his request, but he declined.

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 South Dearborn Community School Corporation is a public agency for purposes of APRA; and therefore, subject to its 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 SDCSC's public records during regular business hours. Ind. Code § 5-14-3-3(a).

2. Holland's requests

In this case we consider whether a former member of a school board is entitled to access the entirety of his official email account after leaving elected office.

Holland's first request seeks access to the email account under his stewardship while he was a member of the SDCSC Board of Trustees. There is no mechanism under the Access to Public Records Act that governs or grants access by a former official or employee to their official email account.

Instead, APRA governs access to public records and, in this context, email messages. Therefore, Holland's first request will not be addressed.

Holland's second request, however, sought the entirety of the inbox and sent folder from his official account. This request is seeking public records rather than *user access* to the account. As a result, this office can address Holland's second request because it falls within the scope of APRA. It is unclear whether this issue has ever been addressed by this office and may be a matter of first impression.

Indeed, it is not an easy judgment call. On one hand, during his time as a school board member, Holland was privy to any sensitive information created or received among the materials. On the other hand, Holland is no longer an authorized representative of SDCSC. This is notable because once any sensitive material leaves the custody of the SDCSC, the agency no longer has control over its dissemination.

Insofar as any specificity expectations are concerned, the reasonable particularity element found at Indiana Code section 5-14-3-3(a)(1) is largely meant to give an agency a foothold in searching for public records. Taken to a certain conclusion, the emails in Holland's former inbox and sent folder are finite. Even so, the retrieval of those emails is another matter altogether.

With requests for email records, this office scrutinizes those asks through the lens of two seminal cases discussing reasonable particularity. Those cases are: (1) *Jent v. Fort Wayne*

Police Dept., 973 N.E.2d 30 (Ind. Ct. App. 2012); and (2) *Anderson v. Huntington County Bd. of Comm'rs.*, 983 N.E.2d 613 (Ind. Ct. App. 2013).

In *Jent*, the court held that:

Whether a request identifies with reasonable particularity the record being requested turns, in part, on whether the person making the request provides the agency with information that enables the agency to search for, locate, and retrieve the records.

973 N.E.2d at 34. Tacit in both cases is an element of realistic expectations. Indeed, the court in *Smith v. State* states exactly that: “implicit in the Indiana access laws is practicality.” 873 N.E.2d 197, 201 (Ind. Ct. App. 2007).

In the end, practicality wins the day. There are too many variables to consider in a request like this. A former official or employee is no longer the steward of the messages sent and received from their official account. They are simply acting as an agent of the principal public entity while in its employ or part of the organization. After departure from the agency, the individual stands in the shoes of any other member of the public.

For SDCSC to fulfill Holland’s request, it would need to curate the entirety of years’ worth of emails without any other search parameters such as subject matter or named senders and recipients. This office is unaware of any binding authority that would place that burden on a public agency.

Simply put, this office is disinterested in setting a precedent whereby former public employees or officials may seek the entirety of their official email account upon request. They

may retain emails as needed while the account is under their purview and custody, but this office cannot identify a statutory or public policy reason for requiring access after the fact without requesting messages with reasonable particularity in accordance with APRA like other members of the public.

CONCLUSION

Based on the foregoing, it is the opinion of this office that the South Dearborn Community School Corporation did not violate the Access to Public Records Act.

A handwritten signature in black ink, appearing to read 'LHB', is positioned above the name of the Public Access Counselor.

Luke H. Britt
Public Access Counselor