
OPINION OF THE PUBLIC ACCESS COUNSELOR

NOAH R. LEININGER,
Complainant,

v.

NORTH WEST HENDRICKS SCHOOL CORPORATION,
Respondent.

Formal Complaint No.
24-FC-49

Luke H. Britt
Public Access Counselor

BRITT, opinion of the counselor:

This advisory opinion is in response to a formal complaint alleging the North West Hendricks School Corporation violated the Access to Public Records Act.¹ Attorney Jessica Billingsley filed an answer 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 July 1, 2024.

¹ Ind. Code § 5-14-3-1-10.

BACKGROUND

In this case we consider whether the school corporation wrongfully procured the complainant's documents in a physical form, denied giving a factual basis, and failed to acknowledge a request for records.²

On June 3, 2024, Noah Leininger (Complainant) submitted a request for records to the North West Hendricks School Corporation (NWHSC) for his own personnel file. Mr. Leininger previously worked at NWHSC, and requested this file in an electronic format; however, Mr. Leininger was delivered his file through the physical mail on June 27, 2024.

The NWHSC met in executive sessions on June 5 and June 18 to discuss job performance evaluations, and after it was revealed that the Tri-West High School Principal Matt Rund would be reassigned to high school English teacher. Believing Mr. Rund was demoted, on June 19, 2024, Mr. Leininger requested to be sent the personnel file for Mr. Matt Rund, notably requesting the factual basis.

The next day on June 20, 2024, Superintendent Scott Syver-son replied to Mr. Leininger's request saying there was no factual basis because Mr. Rund was not subject to disciplinary action leading to his suspension, demotion, or discharge.

² There was another component to Mr. Leininger's complaint; however, we did not find it operable, and declined to analyze that issue due to its lack of reasonable particularity.

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. North West Hendricks School Corporation (NWHSC) is a public agency for the purposes of APRA; and therefore, is subject to 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 NWHSC’s public records during regular business hours. Ind. Code § 5-14-3-3(a).

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

2. Electronic Versus Physical

Under APRA, public record means:

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 and which is generated on paper, paper substitutes, photographic media, chemically based media, magnetic or machine-readable media, electronically stored data, or any other material, regardless of form or characteristics.

Ind. Code § 5-14-3-2(r). As a result of this definition, public agencies are in possession of both physical and electronic records. Although the agency may offer to transfer electronic records to physical records and vice versa, they are not required to do so, pursuant to Ind. Code § 5-14-3-3(j):

This subsection applies to a public record that is in an electronic format. This subsection does not apply to a public record recorded in the office of the county recorder. A public agency shall provide an electronic copy or a paper copy of a public record, at the option of the person making the request for the public record. This subsection does not require a public agency to change the format of a public record.

There is no question that there are parts of a personnel file that is a public record.³ Mr. Leininger requested this file as a previous employee of the corporation. The dispute is that when Mr. Leininger received his file, it was clear that the records in this file were all digital records printed out. These records included copies of Google Forms; records from Frontline Education, an online job application and absence management platform for schools; and Doculivery, an online program for payroll.

Attorney Billingsley writes that although the components of Mr. Leininger's personnel file were printouts of digital records, the school maintains all personnel files in a hard copy format. Attorney Billingsley writes that this is because "the personnel file is a compilation of bits and pieces from different places, electronic or otherwise."

³ Ind. Code § 5-14-3-4(b)(8)

Attorney Billingsley notes that if the school were to oblige Mr. Leininger's request for electronic documents, they would have to go back into the system and print each page to PDF for a second time.

Ultimately, the real matter of concern for this statute prevents an agency from requiring a requester to pay fees for already existing electronic media. Another point of concern for this statute is preventing someone from interacting with digital media such as databases or CSV files by sending them paper copies of requested copies. As a result, this office declines to find NWHSC's treatment of the situation as contrary to APRA.

3. Factual Basis for a Disciplinary Action

Pursuant to Ind. Code § 5-14-3-4(b)(8)(C) "the factual basis for a disciplinary action in which final action has been taken that resulted in the employee being suspended, demoted, or discharged" is not a document exempt from disclosure.

Essentially, there is a three-pronged test to trigger the creation and disclosure of a factual basis under APRA:⁴

- 1) Disciplinary Action, and
- 2) Final Action that results in
- 3) Suspension, Demotion, or Discharge.

APRA does not define the terms *factual basis*, *disciplinary action*, *final action*, *suspension*, *demotion*, or *discharge*. As a result, this case requires an interpretation of Indiana Code section 5-14-3-4(b)(8) by this Office.

⁴ Opinion of the Public Access Counselor 18-FC-34, 22-FC-73

As set forth above, our legislature has vested the Public Access Counselor with the power to “issue advisory opinions to interpret [Indiana’s] public access laws.”⁵

(U)ndefined words and phrases in a statute must be given their plain, ordinary and usual meaning. Words and phrases in a statute are given their plain and ordinary meaning unless they are technical words and phrases having a peculiar and appropriate meaning in the law requiring definition according to their technical import.

In order to determine the plain and ordinary meaning of words, courts may properly consult English language dictionaries.

Walling v. Appel Service Company, Inc. 641 N.E.2d 647, 649 (Ind. Ct. App. 1994) [Citations omitted.] quoting *Ashlin Transportation Services, Inc. v. Indiana Unemployment Ins. Board*, 637 N.E.2d 162, 167 (Ind. Ct. App. 1994).

3.1 Disciplinary Action

To satisfy the first prong of the factual basis test there must be a disciplinary action. The term *disciplinary action* is not defined under APRA. Indeed, reasonable minds may—and frequently do—disagree about what constitutes a disciplinary action in this context.

Mr. Leininger noted that with the recent executive sessions, discussing job evaluations, the change for Mr. Matt Rund from principal to high school English teacher appears to suggest a disciplinary action. Because of the capabilities of this

⁵ Ind. Code § 5-14-4-10(6).

office, there is no way to verify disagreements of fact. Ultimately, there is little to no evidence that this change in position was due to a disciplinary action other than the mere optics of the situation

Additionally, Attorney Billingsley attests the school “denies that any disciplinary action led to or induced Mr. Rund’s transition to the classroom.” Because of the nature of executive sessions, the public is unable to know what happened behind those closed doors; however, Attorney Billingsley assures that the private discussions during that executive session “did not include disciplining Mr. Rund.”

For the sake of completeness and robustness, this office proceeds to analyze the situation on the other two prongs for a factual basis if this resignation was a result of disciplinary action unknown to the public.

3.2 Final Action Resulting in Suspension, Demotion, or Discharge

The next two prongs of the factual basis test are whether the result of a final action is a suspension, demotion, or discharge. These terms, again, are not statutorily defined under APRA or Title 20 of the Indiana Code.

Because the job assessment happened during an executive session, it is strictly prohibited that final action be taken during these meetings.⁶ Therefore, any perceivable final action taken would be the statement that Mr. Rund was going to move to a high school teaching position.

⁶ Ind Code § 5-14-1.5-6.1(c)

By simple dictionary definition, “demote” is “to reduce to a lower grade or rank.”⁷ Although, in the strictest terms, Mr. Rund has been demoted from principal to teacher, the statutory context plays into the understanding of “demotion.”

Written alongside “suspension” and “discharge,” one can easily conclude the legislature alludes to a reduction in power against the employee’s desires. So, while Mr. Rund was demoted from principal to teacher, it does not appear to align with the situation the legislature is pointing to. Especially requiring that the disclosure of a factual basis is required alongside a disciplinary action, without more, it appears understandable why NWHSC does not have a factual basis for Mr. Rund.

⁷ Merriam-Webster.com, *Demote*, <https://www.merriam-webster.com/dictionary/demotion>

CONCLUSION

Based on the foregoing, it is the opinion of this office that North West Hendricks School Corporation has not violated the Access to Public Records Act. Although concerns surrounding the optics of their reallocation of Mr. Rund may appear suspect, there is no proof to substantiate these concerns.

A handwritten signature in black ink, appearing to be 'LHB', written in a cursive style.

Luke H. Britt
Public Access Counselor

Issued: August 1, 2024