



STATE OF INDIANA

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June 15, 2012

Johnson County Public Library
Beverly Martin, Director
49 E. Monroe Street
Franklin, Indiana 46131

Re: Personal E-mail correspondence and the Access to Public Records Act

Dear Ms. Martin:

This is in response to your informal inquiry regarding personal e-mail correspondence under the Access to Public Records Act ("APRA"). Pursuant to Ind. Code § 5-14-3-9(e), I issue the following informal opinion in response to your inquiries. My opinion is based on applicable provisions of the APRA, I.C. § 5-14-3-1 *et seq.*

BACKGROUND

You inquire when a public official uses his personal e-mail address to conduct any business related to the business of the agency, to which he or she is a member, is that e-mail correspondence subject to the APRA. A newly appointed member to the Library Board ("Board") wanted to be sure that his library related e-mails are accessible to the public. You have assured him that regardless of whatever account he used for library purposes, that those e-mails are governed by the APRA. You understand that personal e-mail correspondence from a personal e-mail address is not subject to the APRA. Most Board members have established g-mail accounts for library business with the understanding that e-mails sent to that account related to library business are subject to the APRA. Others wish to continue to use their work e-mail addresses in order not to have several accounts to check.

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 I.C. § 5-14-3-1. Accordingly, any person has the right to inspect and copy a public agency's records during regular business hours unless the records are excepted from

disclosure as confidential or otherwise nondisclosable under the APRA. *See* I.C. § 5-14-3-3(a).

A public record is defined 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 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. *See* I.C. § 5-14-3-2(n). “Generally, if a public official sends an email from his or her personal email account to another official’s personal email account, that message is not a public record under the APRA.” *See Opinion of the Public Access Counselor 10-INF-05*. However, if the personal e-mail messages are received or filed with the respective public agency, they become a public record. *See Opinion of the Public Access Counselor 09-FC-205*. For example, if a Board member received an e-mail to his personal e-mail account from a constituent regarding an issue related to the Board, once the Board member forwards or delivers the message to the agency, the record would then become a public record. *Id.* Also, any e-mail correspondence between an agency employee, via the agency’s e-mail system, and a Board member, via the member’s personal e-mail account, would be a public record, as the record would have been created or received by the agency, and retained on the agency’s e-mail system. *See Opinion of the Public Access Counselor 10-INF-05*.

Here you have indicated the certain board members have specifically created personal e-mail accounts solely to conduct the business of the Board. In previous discussions with you and Mr. Marks, the e-mail contact information has, may, or will be published on the Board’s website. If the Board member or agency is going to broadly publicize the Board member’s personal e-mail address via the agency’s website, business cards, or in some other fashion, so that the public is made aware that should they have issues related to the agency, then they should contact the Board member at his personal e-mail address, at that point it is likely that the e-mail correspondence sent and received from the Board member’s personal e-mail address, related to agency issues, would become a public record.

It is important to remember that the APRA also requires public agencies to maintain and preserve public records in accordance with applicable retention schedules. *See* I.C. § 5-14-3-4(e). A public agency shall protect public records from loss, alteration, mutilation, or destruction. *See* I.C. § 5-14-3-7(a). A public agency shall further taken precautions that protect the contents of public records from unauthorized access, unauthorized access by electronic device, or alteration. *See* I.C. § 5-14-3-7(b). If the e-mail correspondence from a Board member’s personal e-mail account dedicated to agency issues is considered a public record, the agency would be required to retain those records pursuant to the applicable retention schedule. It might be more prudent in order to comply with the requirements of record preservation that, should it be feasible and requested, to provide the Board member with an e-mail account from the agency so that it can be assured that all records are retained. If the records are preserved in a personal e-mail account, after the member no longer serves on the Board, it may prove to be

impossible to gain access to the records should it be necessary. Alternatively, if a board member wanted to ensure that his personal e-mail correspondence, related to agency issues, became a public record, he or she could carbon-copy the agency in all of his outgoing e-mail correspondence and forward all of his incoming correspondence, as opposed to creating a new account.

If I can be of additional assistance, please do not hesitate to contact me.

Best regards,

A handwritten signature in black ink, appearing to read "J. Hoage". The signature is stylized with a large initial "J" and a cursive "Hoage".

Joseph B. Hoage
Public Access Counselor

cc: Gary Moody, Jay Marks