



STATE OF INDIANA

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October 21, 2015

Mr. Charles R. Rubright
Bose McKinney & Evans LLP
111 Monument Circle, Ste. 2700
Indianapolis, IN 46204

Re: Informal Inquiry 15-INF-26; Reasonable Particularity of Email Requests

Dear Mr. Rubright:

This is in response to your informal inquiry regarding a request made to the Metropolitan School District of Washington Township for email records between school administrators and a contractor. Pursuant to Ind. Code § 5-14-4-10(5), I issue the following informal opinion in response to your inquiry. My opinion is based on applicable provisions of the Access to Public Records Act ("APRA"), Ind. Code § 5-14-1.5-1 *et seq.*

BACKGROUND

The Metropolitan School District of Washington Township ("District") recently received a request for public records seeking the following information:

Emails sent and/or received by [named email address] and/or [named email request] to employees or representatives of Andy Frain Services

Emails sent and/or received by [named email address] and/or [named email request] containing "Frain"

You contend these two requests lack specificity and do not meet the reasonable particularity requirements of Ind. Code § 5-14-3-3. You seek guidance and confirmation.

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 Ind.

Code § 5-14-3-1. The Metropolitan School District of Washington Township is a public agency for the purposes of the APRA. See Ind. Code § 5-14-3-2. Accordingly, any person has the right to inspect and copy the District's public records during regular business hours unless the records are excepted from disclosure as confidential or otherwise non-disclosable under the APRA. *See* Ind. Code § 5-14-3-3(a).

I addressed this issue in 2014 in *Informal Opinion of the Public Access Counselor 14-INF-30* wherein I stated:

Under the APRA, all requests must be reasonably particular in order for the public agency to locate, retrieve and produce records responsive to the request. *See* Ind. Code § 5-14-3-3(a).

Although not defined in the APRA, the Indiana Court of Appeals addressed the issue of reasonable particularity in the APRA in *Jent v. Fort Wayne Police Dept.*, 973 N.E.2d 30 (Ind. Ct. App. 2012), and again in *Anderson v. Huntington County Bd. of Com'rs.*, 983 N.E.2d 613 (Ind. Ct. App. 2013). The Court in *Jent* 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.

As I have stated in the past, email requests generally present a number of problematic challenges for a public agency. Given the sheer amount of electronic data on an email server, a voluminous request could take a significant amount of time to produce. While technology has evolved to make searches more practical with the ability to target key word hits or parameters, the agency still has to amass those records which are protected from disclosure under other APRA exceptions.

Consider the definition of particularity in *The New International Webster's Dictionary and Thesaurus, Encyclopedic Ed.*, 200: "exactitude in description; circumstantiality; strict or careful attention to detail; fastidiousness." I do believe voluminous records requests can meet that standard and agencies are required to satisfy voluminous requests, but to meet the reasonable particularity standard, they cannot be blanket requests.

When it comes to email, I generally rely on the guidance provided by the Court in *Anderson*. The Court agreed with former Public Access Counselor Hoage that a reasonably particular request names a specific sender, recipient, and date frame. I would also contend a specific request would include one or more key words for a search parameter.

I have revisited this issue several times over the past year as public records requests for emails have become more and more commonplace. I do not believe that requiring a named sender, recipient, date range (preferably six months or less) and a set of key words

is so draconian as to be burdensome. This frankly prevents a “fishing expedition” and prevents a requester from casting a wide net to capture a voluminous amount of emails. A requester should have done enough leg work to know the lanes of email traffic between communicators.

That said, I have often set an expectation that a request isn’t summarily denied due to a lack of reasonable particularity. Alternatively, a public agency should work with a requester to narrow the scope of a request. It is possible the requester does not know named personnel at Andy Frain Services but the agency knows the name of the point of contact. By sharing this information, a requester could ostensibly be able to narrow a request for specificity.

As written, however, you are correct that the requests for emails lack reasonable particularity.

Best regards,

A handwritten signature in black ink, appearing to read 'LH Britt', with a large, sweeping flourish extending from the bottom right.

Luke H. Britt
Public Access Counselor