

SUMMONS

IN THE HAMILTON SUPERIOR COURT, ROOM NO. _____

WTHR-TV,)
)
Plaintiff,)
and)
)
HAMILTON SOUTHEASTERN)
SCHOOL DISTRICT)
)
Defendant,)

TO RESPONDENT: Highest Officer Present
 Hamilton Southeastern Schools
 13485 Cumberland Road
 Fishers, IN 46038

You are hereby notified that you have been sued by the person named as Plaintiff in the Court indicated above.

The nature of the suit against you is stated in the complaint, which is attached to this Summons. It also states the relief sought or the demand made against you by the Plaintiff.

An answer or other appropriate response in writing to the complaint must be filed by you or your attorney within twenty (20) days, commencing the day after you receive this Summons, (or twenty-three (23) days if this Summons was received by mail), or a judgment by default may be rendered against you for the relief demanded by the plaintiff.

If you have a claim for relief against the plaintiff arising from the same transaction or occurrence, you must assert in it your written answer.

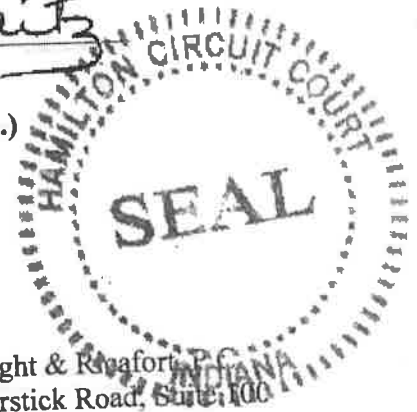
Date: 6/8/2018

Tammy Baitz
 Clerk, Hamilton County

(The following manner of Service of Summons is hereby designated.)

- Registered or Certified Mail
- Service on Individual
- Service at place of employment, to-wit:
- Private Service

Michael A. Wilkins
 Michael A. Wilkins, #14368-02
 Attorney for Plaintiff



Broyles Kight & Roaford, P.C.
 8250 Haverstick Road, Suite 100
 Indianapolis, Indiana 46240
 (317) 571-3601 Fax: 571-3610

WTHR-TV,
Plaintiff,
v.

HAMILTON SOUTHEASTERN
SCHOOL DISTRICT
Defendant.

IN THE HAMILTON COUNTY
SUPERIOR COURT NO. 3

CAUSE NO. 29D03-_____

APPEARANCE

Party Classification: Plaintiff

1. The undersigned attorney and all attorneys listed on this form now appear in this case for the following party members: **WTHR-TV**
2. Applicable attorney information for service as required by Trial Rule 5(B)(2) and for case information as required by Trial Rules 3.1 and 77(B) is as follows:

Name:	Michael A. Wilkins	Attorney Number: 14368-02
Address:	Broyles Kight & Ricafort 8250 Haverstick Road, Suite 100 Indianapolis, Indiana 46240	Phone: (317) 571-3601 Fax: (317) 571-3610 E-mail: mwilkins@bkrlaw.com
3. There are other party members: **NO**
4. *If first initiating party filing this case*, the Clerk is requested to assign this case the following Case Type under Administrative Rule 8(b)(3): **CT**
5. I will accept service by FAX at the above noted number: **YES**
6. This case involves support issues: **NO** There are related cases: **NO**
7. This form has been served on all other parties; Certificate of Service is attached: **NO**
8. Additional information required by local rule: **N/A**

9. I have reviewed and discussed the Commitment to Respect and Civility with my client and agree to aspire to its goals.

Respectfully submitted,

BROYLES KIGHT & RICAFORT

A handwritten signature in black ink, appearing to read "Michael A. Wilkins", written over a horizontal line.

Michael A. Wilkins

Michael A. Wilkins, #14368-02
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WTHR-TV,

Plaintiff,

v.

HAMILTON SOUTHEASTERN

SCHOOL DISTRICT

Defendant.

IN THE HAMILTON COUNTY
SUPERIOR COURT NO. 3

CAUSE NO. 29D03-_____

COMPLAINT

Plaintiff WTHR-TV (“WTHR” or “Plaintiff”), by and through its undersigned counsel, hereby alleges as follows:

1. This is an action under the Indiana Access to Public Records Act, Ind. Code §§ 5-14-3-1 *et seq.*, (“APRA” or the “Act”) for relief for violations of the APRA by Hamilton Southeastern School District (“HSE” or “Defendant”).

2. For more than a year, WTHR and its Senior Investigative Reporter Bob Segall have been attempting to obtain information from HSE regarding the suspension of Rick Wimmer, a teacher and coach at Fishers High School, by HSE’s Board of Education at its December 14, 2016 meeting.

3. The APRA makes expressly clear Indiana’s public policy “that all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees.” Ind. Code § 5-14-3-1.

4. To that end, the APRA expressly requires, among other things, public entities like HSE to make available to the public “the factual basis for a disciplinary action in which final action has been taken and that resulted in the employee being suspended, demoted, or discharged.” Ind. Code § 5-14-3-4(b)(8)(C).

5. Despite this clear statutory mandate, HSE has repeatedly refused to provide WTHR with the “factual basis” for Mr. Wimmer’s suspension. *Id.* HSE is depriving WTHR, its viewers, and the citizens of Indiana of basic information regarding a public employee in contravention of the Act.

6. By this action, WTHR seeks to vindicate its and the public’s right to information about the actions of government entities and officials under the APRA.

PARTIES

7. Plaintiff WTHR is a television news organization and the NBC affiliate in Indianapolis, Indiana. Founded locally in 1957, WTHR is owned by VideoIndiana, Inc., and its headquarters are located at 1000 North Meridian Street, Indianapolis, Indiana, 46204. WTHR provides news, sports and weather to Central Indiana. It is the recipient of multiple prestigious journalism awards, including six Edward R. Murrow awards, five Peabody awards, five National Headliner awards, three duPont-Columbia awards, two Sigma Delta Chi awards, two IRE awards and a national Emmy award that recognize the TV station’s excellence in general news reporting, investigative reporting and community service.

8. Defendant Hamilton Southeastern School District is a public agency subject to the APRA. Ind. Code § 5-14-3-2. Its headquarters are located at 13485 Cumberland Road, Fishers, Indiana, 46038.

JURISDICTION AND VENUE

9. This Court has personal and subject matter jurisdiction over this matter pursuant to Ind. Code § 5-14-3-9.

10. Venue in this Court is proper pursuant to Ind. Code § 5-14-3-9.

FACTS

Background

11. A year-long investigation by WTHR and its Senior Investigative Reporter, Mr. Segall, has uncovered numerous incidents of Indiana public school teachers and staff being suspended, placed on administrative leave, moved, or resigning, with little or no information provided to the public to explain the changes. *See* Bob Segall, *13 Investigates: Schools going to great lengths, expense to keep secrets*, WTHR (Mar 12, 2018), <https://www.wthr.com/article/13-investigates-schools-going-to-great-lengths-expense-to-keep-secrets>.

12. One incident that WTHR has been investigating concerns Rick Wimmer (“Wimmer”), a teacher and football coach at Fishers High School, a school within the HSE system.

13. In or around September of 2016, Fishers High School Principal Jason Urban notified parents that Mr. Wimmer was placed on paid administrative leave following an incident with a student during a class at the school. *See Fishers H.S. football coach placed on leave after incident with student*, WTHR (Sep. 16, 2016), <https://www.wthr.com/article/fishers-hs-football-coach-placed-on-leave-after-incident-with-student>.

14. HSE reported the incident that resulted in Mr. Wimmer’s September 2016 paid administrative leave to the Fishers Police. *Id.*

15. Approximately three months later, on or about December 14, 2016, the HSE Board of Education held a meeting and unanimously approved a consent agenda for certified staff (the "Consent Agenda"). A true and correct copy of the Consent Agenda is attached as Exhibit A, and is incorporated by reference.

16. The Consent Agenda lists approximately 38 employees by name, along with their position, the action being voted on, and other information. *See id.*

17. The final item on the Consent Agenda does not include an employee's name. It states, in its entirety:

Employee #10042 Teacher
5 days of suspension, unpaid.

Ex. A.

18. Employee #10042 is Mr. Wimmer. As a result of the vote by the HSE's Board of Education on or about December 14, 2016, Mr. Wimmer was suspended for five days without pay.

19. No "factual basis" for Mr. Wimmer's suspension was provided by HSE either before or after the December 14, 2016 meeting, *cf.* Ind. Code § 5-14-3-4(b)(8)(C), and the public is still in the dark about what precipitated the vote to suspend Mr. Wimmer, including whether it was related to the September 2016 incident.

Plaintiff's First Request

20. On or about January 5, 2017, Mr. Segall had a telephonic conversation with Dr. Allen Bourff, HSE's superintendent, during which he made an oral request for certain information about Mr. Wimmer's suspension (the "First Request"). Specifically, Mr. Segall requested, in his capacity as a reporter for WTHR: (1) the name of the employee who had been suspended by the HSE Board at its December 14, 2016 meeting, (2) facts establishing the

grounds for the suspension, (3) the dates the suspension was served, (4) the date of the incident(s) for which the discipline was deemed necessary, and (5) whether the teacher in question was the same as the teacher involved in an incident WTHR had previously reported on.

21. Later that day, on or about January 5, 2017, Dr. Bourff sent Mr. Segall an e-mail stating:

Hamilton Southeastern Schools maintains the confidentiality of personnel matters. Pursuant to Indiana Code § 5-14-3-4(b)(8)(c), the board action for which you inquired was due to not implementing instructions for classroom management strategies.

A true and correct copy of that January 5, 2017 e-mail is attached here to as Exhibit B, and is incorporated by reference.

22. Mr. Segall responded to Dr. Bourff's January 5, 2017 e-mail that same day, asking for clarification and additional information. Mr. Segall's e-mail went unanswered.

23. The next day, on or about January 6, 2017, Mr. Segall discussed the First Request and Dr. Bourff's January 5, 2017 e-mail with Indiana's Public Access Counselor ("PAC"). The PAC advised Mr. Segall that HSE's statement that "the board action for which you inquired was due to not implementing instructions for classroom management strategies[]" did not sufficiently identify the factual basis for a disciplinary action as required by the APRA.

24. Accordingly, later that same day, Mr. Segall followed up with Dr. Bourff regarding the First Request via e-mail, stating that HSE's response "did not fulfill the school district's obligations under IC 5-14-3-4(b)(8)(c)." Mr. Segall's e-mail renewed the First Request, asking for, *inter alia*, "[t]he factual basis for the teacher suspension that the HSE board voted to approve on December 14, 2016." A true and correct copy of that January 6, 2017 e-mail is attached hereto as Exhibit C, and is incorporated by reference.

25. On or about January 9, 2017, Mr. Segall contacted Beverly Redmond ("Redmond"), the Director of School & Community Relations for HSE, regarding the First Request. Later that same day, Mr. Segall received an e-mail from Ms. Redmond, a true and correct copy of which is attached hereto as Exhibit D, and is incorporated by reference.

26. In her January 9, 2017 e-mail, Ms. Redmond stated:

Please see HSE Schools' response to your request below:

Hamilton Southeastern Schools respects the privacy of our students and employees. Consistent with that, we do not reference employees engaged in disciplinary action by name. On December 14, 2016, the Board of School Trustees approved its first personnel report utilizing employee numbers. That report references a suspension for an employee due to not following Board of School Trustees Policy G02.06.

Ex. D.

27. Ms. Redmond subsequently provided a copy of the Board of School Trustees Policy G02.06 ("The Policy"), after being asked by Mr. Segall. A true and correct copy of The Policy is attached hereto as Exhibit E, and is incorporated by reference. The Policy includes a number of broad, general statements concerning HSE's expectations for its employees and staff, including, for example, that staff "will strive to set the kind of example for students that will serve them well in their own conduct." Ex. E.

28. In a phone call with Mr. Segall on or about January 10, 2017, Ms. Redmond identified Mr. Wimmer as the teacher that HSE's Board of Education voted to suspend on or about December 14, 2016. During that call, however, Ms. Redmond did not provide the factual basis for Mr. Wimmer's suspension, or any additional information concerning his suspension beyond what had already been provided to Mr. Segall via e-mail. Among other things, Ms. Redmond did not provide the date of the incident that prompted the disciplinary action.

29. On or about January 12, 2017, Mr. Segall submitted, on behalf of WTHR, a formal complaint with the PAC regarding HSE's failure to fully respond to the First Request (the "First Complaint"). A true and correct copy of the First Complaint is attached hereto as Exhibit F, and is incorporated by reference.

30. The PAC issued a formal, written advisory opinion in response to the First Complaint on or about March 3, 2017 (the "First Advisory Opinion"). A true and correct copy of the First Advisory Opinion is attached hereto as Exhibit G, and is incorporated by reference.

31. Mr. Segall, on behalf of WTHR, subsequently contacted HSE and its counsel and requested that HSE comply with the PAC's First Advisory Opinion and provide a factual basis for its suspension of Mr. Wimmer per the First Request.

32. By letter dated March 23, 2017, HSE's counsel responded to Mr. Segall, and stated that "providing more detail in regard to your inquiry is both not required by the referenced code provision and prohibited by Indiana Code § 5-14-3-4(a)(3). Any more detail would compromise what is protected by the Family Educational Rights & Privacy Act (FERPA)." A true and correct copy of that letter is attached as Exhibit H, and is incorporated by reference.

33. On or about April 10, 2017, Mr. Segall submitted, on behalf of WTHR, a second formal complaint with the PAC (the "Second Complaint") regarding HSE's refusal to comply with the PAC's First Advisory Opinion and its failure provide a factual basis in response to the First Request. A true and correct copy of the Second Complaint is attached hereto as Exhibit I, and is incorporated by reference.

34. On or about May 30, 2017, the PAC issued a formal, written advisory opinion in response to the Second Complaint (the "Second Advisory Opinion"). A true and correct copy of the Second Advisory Opinion is attached hereto as Exhibit J, and is incorporated by reference.

35. Mr. Segall, on behalf of WTHR, subsequently contacted HSE and its counsel and requested that HSE comply with the PAC's Second Advisory Opinion and provide a factual basis for its suspension of Mr. Wimmer per the First Request.

36. By letter dated June 21, 2017 and sent to WTHR's counsel, HSE's counsel stated that "HSE has no obligation to supplement the information already provided pursuant to I.C. § 5-14-3-4(b)(8)(C)." A true and correct copy of that June 21, 2017 letter is attached hereto as Exhibit K, and is incorporated by reference.

Plaintiff's Second Request

37. On or about October 30, 2017, WTHR submitted a written request under the APRA to HSE through counsel and via e-mail and FedEx overnight mail (the "Second Request"). A true and correct copy of the Second Request (without the cover sheet) is attached hereto as Exhibit L.

38. The Second Request asked for:

access to and copies of the portions of Rick Wimmer's personnel file that contain the following information:

- (A) his name, compensation, job title, business address, business telephone number, job description, education and training background, previous work experience, or dates of first and last employment;
- (B) information relating to the status of any formal charges against him; and
- (C) the factual basis for any disciplinary action in which final action has been taken and that resulted in his being suspended, demoted, or discharged.

Ex. L.

39. The Second Request makes clear that it "does not ask for—nor is WTHR interested in—the name of any student." *Id.*

40. On or about December 7, 2017, Mr. Segall received an e-mail from Emily Abbotts, the Director of School and Community Relations at HSE (the "Second Request

Response”). A true and correct copy of HSE’s Second Request Response is attached hereto as Exhibit M.

41. The Second Request Response contained various information about Mr. Wimmer, but did not include or attach any documents. *See Ex. M.*

42. With respect to subpart C of the Second Request, the Second Request Response stated, *inter alia*:

Mr. Wimmer was suspended for five days without pay on December 14, 2016 due to not implementing instructions for classroom management strategies consistent with Board of School Trustees Policy G02.06

Ex. M.

43. On or about December 8, 2017, Mr. Segall responded to Ms. Abbotts via e-mail, a true and correct copy of which is attached hereto as Exhibit N and is incorporated by reference.

In his e-mail, Mr. Segall stated, *inter alia*:

The October 30, 2017 APRA request submitted by WTHR and myself seeks “access to and copies of the portions of Rick Wimmer’s personnel file” that contain certain categories of information. While your email appears to contain information about Mr. Wimmer, it does not include or attach any records or portions thereof from his personnel file per the request. Please let me know when I can come inspect these records. If you’d prefer to send them to me my email and mailing address are included below.

Ex. N.

44. Neither Ms. Abbotts nor anyone else at HSE responded to Mr. Segall’s December 8, 2017 e-mail or provided access to the requested records.

45. On or about December 22, 2017, counsel for WTHR and Mr. Segall submitted a formal complaint with the PAC (the “Third Complaint”) regarding HSE’s Second Request Response. A true and correct copy of the Third Complaint (without cover sheet or exhibits) is attached hereto as Exhibit O, and is incorporated by reference. The Third Complaint addresses

(1) HSE's failure to provide access to any of the requested public records, and (2) a failure to provide a factual basis for Mr. Wimmer's December 14, 2016 suspension.

46. On or about February 8, 2018, the PAC issued a formal, written advisory opinion in response to the Third Complaint (the "Third Advisory Opinion"). A true and correct copy of the Third Advisory Opinion is attached hereto as Exhibit P, and is incorporated by reference.

47. Since the issuance of the Third Advisory Opinion, HSE has not further responded to the Second Request.

CAUSES OF ACTION

Count I

Violation of the APRA for Denial of Access to and Copies of Public Records (First Request)

48. Plaintiff repeats and realleges paragraphs 1-47, as though fully set forth herein.

49. Defendant is a "public agency" as that term is defined in the APRA.

50. By the First Request, Plaintiff properly requested access to and copies of Defendant's public records that it has possession, custody, and/or control over.

51. Plaintiff is entitled to the records requested by its First Request under the APRA.

52. The public records requested by Plaintiff in the First Request cannot be withheld by Defendant under the APRA. Ind. Code § 5-14-3-4(b)(8)(A)-(C).

53. Defendant denied access to and/or copies of its public records requested by Plaintiff in its First Request.

54. Plaintiff sought and obtained two advisory opinions from the PAC regarding the First Request.

55. Defendant's denial of access to and/or copies of its public records requested by Plaintiff in its First Request is a violation of the APRA.

Count II

**Violation of the APRA for Denial of Access to and Copies of Public Records
(Second Request)**

56. Plaintiff repeats and realleges paragraphs 1–47, as though fully set forth herein.
57. Defendant is a “public agency” as that term is defined in the APRA.
58. By the Second Request, Plaintiff properly requested access to and copies of Defendant’s public records that it has possession, custody, and/or control over.
59. Plaintiff is entitled to the records requested by its Second Request under the APRA.
60. The public records requested by Plaintiff in the Second Request cannot be withheld under the APRA. Ind. Code § 5-14-3-4(b)(8)(A)–(C).
61. Defendant denied access to and/or copies of its public records requested by Plaintiff in its Second Request.
62. Defendant did not cite any exemptions within the APRA to withhold records or portions thereof that are responsive to Plaintiff’s Second Request.
63. Plaintiff sought and obtained an advisory opinion from the PAC regarding the Second Request.
64. Defendant’s denial of access to and/or copies of its public records requested by Plaintiff in its Second Request is a violation of the APRA.

Count III

**Violation of the APRA for Failure to Provide All Disclosable Data Comprising a
Factual Basis for Disciplinary Action
(First Request and Second Request)**

65. Plaintiff repeats and realleges paragraphs 1–47, as though fully set forth herein.
66. Defendant is a “public agency” as that term is defined in the APRA.

67. Under the APRA, “a public agency that maintains or contracts for the maintenance of public records in an electronic data storage system shall make reasonable efforts to provide to a person making a request a copy of all disclosable data contained in the records” Ind. Code § 5-14-3-3(d).

68. Defendant cannot withhold “the factual basis for a disciplinary action in which final action has been taken and that resulted in the employee being suspended, demoted, or discharged.” Ind. Code § 5-14-3-4.

69. Upon information and belief, Defendant maintains and/or contracts for the maintenance of public records in an electronic data storage system.

70. By the First Request and Second Request, Plaintiff properly asked Defendant to provide access to records containing and/or the factual basis for the suspension of Mr. Wimmer by the HSE Board of Education that took place on or about December 14, 2016.

71. In response to Plaintiff’s First Request and Second Request, Defendant refused to provide and denied access to “all disclosable data” that constitutes the factual basis for the suspension of Mr. Wimmer by the HSE Board of Education that took place on or about December 14, 2016.

72. Plaintiff sought and obtained advisory opinions from the PAC regarding the First Request and the Second Request.

73. Defendant’s denial of access to “all disclosable data” that constitutes the factual basis for the suspension of Mr. Wimmer by the HSE Board of Education that took place on or about December 14, 2016 is a violation of the APRA.

Count IV

**Violation of the APRA for Refusal to Provide a Factual Basis for Disciplinary Action
(First Request and Second Request)**

74. Plaintiff repeats and realleges paragraphs 1–47, as though fully set forth herein.

75. Defendant is a “public agency” as that term is defined in the APRA.

76. Defendant must provide, upon request, “the factual basis for a disciplinary action in which final action has been taken and that resulted in the employee being suspended, demoted, or discharged.” Ind. Code § 5-14-3-4.

77. By the First Request and Second Request, Plaintiff properly asked Defendant to provide the factual basis for the suspension of Mr. Wimmer by the HSE Board of Education that took place on or about December 14, 2016.

78. Defendant has refused to provide and has denied access to the factual basis for the suspension of Mr. Wimmer by the HSE Board of Education that took place on or about December 14, 2016.

79. Plaintiff sought and obtained advisory opinions from the PAC regarding the First Request and the Second Request.

80. Defendant’s refusal to provide and denial of access to the factual basis for the suspension of Mr. Wimmer by the HSE Board of Education that took place on or about December 14, 2016 is a violation of the APRA.

REQUESTED RELIEF

WHEREFORE, Plaintiff respectfully requests the court:

(1) compel Defendant to permit Plaintiff to inspect and copy the public records sought by its First Request and Second Request;

(2) compel Defendant to provide Plaintiff with "all disclosable data" that constitutes the factual basis for the suspension of Mr. Wimmer by the HSE Board of Education that took place on or about December 14, 2016.

(3) compel Defendant to provide Plaintiff with the factual basis for the suspension of Mr. Wimmer by the HSE Board of Education that took place on or about December 14, 2016;

(4) issue a declaration pursuant to Ind. Code § 34-14-1-1 that Plaintiff has a right to inspect and copy the public records requested by the First Request and Second Request;

(5) issue a declaration pursuant to Ind. Code § 34-14-1-1 that Plaintiff has a right to "all disclosable data" that constitutes the factual basis for the suspension of Mr. Wimmer by the HSE Board of Education that took place on or about December 14, 2016.

(6) issue a declaration pursuant to Ind. Code § 34-14-1-1 that Plaintiff has a right to the factual basis for the suspension of Mr. Wimmer by the HSE Board of Education that took place on or about December 14, 2016;

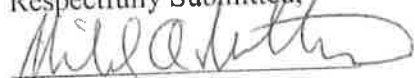
(7) provide for expedited hearing of this action pursuant to Ind. Code § 5-14-3-9(l);

(8) award Plaintiff its reasonable attorneys' fees, court costs, and other reasonable expenses pursuant to Ind. Code § 5-14-3-9; and

(9) grant such other relief as the Court may deem just and proper.

Dated: 6/8/18

Respectfully Submitted,



Michael A Wilkins
Attorney No. 14368-02
BROYLES KIGHT & RICAFORT, P.C.
8250 Haverstick Road, Suite 100
Indianapolis, IN 46240
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amarshall@rcfp.org

Counsel for Plaintiff

* *Pro hac vice* applications
forthcoming

29D03-1806-MI-005244

Hamilton Superior Court 3

**Filed: 6/8/2018 11:00 AM
Tammy Baitz
Clerk
Hamilton County, Indiana**

EXHIBIT A

**Consent Agenda
December 14, 2016**

Certified Staff Name	Position	Building	Rate
Albrecht, John	Boys Head Track Coach Replacing Chris Swisher, 2/13/17	HHS	15% of ECA base
Allgeier, Stacy	Wellness Teacher Temporary For Lauren Feldman's Maternity Leave Revised Dates, 8/29/16 through 5/26/17	FCJ	
Bailey, Clifford	Intramurals 12/7/16	HHS	3% of ECA base
Beck, Sheila	Art Teacher Temporary For Lindsay Cortelyou's Adoption Leave Revised Dates, 11/2/16 through 2/3/17 Verified Additional Year of Experience Salary Correction to B&5, effective 11/2/16	SCI	
Brooks, Brooke	Counselor Returned from Maternity Leave, 12/5/16	FCJ	
Brown, Laura	Special Education Teacher Maternity Leave, 1/2/17 through 2/3/17	HHS	
Brown, Linda	Guidance Counselor Salary Adjustment, Effective 1/1/17	FHS	\$84,685.17
Carter, April	Special Education Teacher Replacing Allison Hillebrand, 1/2/17	HPE	B&0
Conn, Lindsey	Special Education Teacher Resignation, 11/2/16	RJH	
Conrad, Kate	5th Grade Teacher Returned from Medical Leave, 11/7/16	HIJ	
Conway, Stacy	6th Grade Teacher Temporary For Lindsay Dalton's Maternity Leave Revised Dates, 5/26/17	FCI	
Cortelyou, Anthony	5th Grade Teacher Revised Adoption Leave Dates 11/7/16 through 11/22/16 Returned from Adoption Leave, 11/28/16	SCI	
Cortelyou, Lindsay	Art Teacher Revised Adoption Leave Dates	SCI	

**Consent Agenda
December 14, 2016**

Certified Staff Name	Position 11/2/16 through 2/3/16	Building	Rate
Danciu, Ioana	Homebound Instructor 11/22/16	HIJ	per hourly rate
Deckard, Nicole	3rd Grade Teacher Returned from Maternity Leave, 11/21/16	GES	
Edwards, Shannon	2nd Grade Teacher Maternity Leave, 11/17/16 through 2/20/17	HRE	
Eickstead, Susan	Homebound Instructor 11/29/16	FHS	per hourly rate
Feldman, Lauren	Wellness Teacher Revised Maternity Leave Dates 8/29/16 through 5/26/17	FCJ	
Funk, Allison	Early Childhood Teacher Returned from Maternity Leave, 12/5/16	SCE	
Gelhar, Katie	Social Studies Teacher Medical Leave, 11/22/16 through 12/16/16	HHS	
Hanawalt, Karen	Mathematics Teacher Returned from FMLA, 11/21/16	FHS	
Hillebrand, Allison	Special Education Teacher Resignation, 1/2/17	HPE	
Hudson, Vickie	2nd Grade Teacher Revised Medical Leave Dates 12/13/16 through 1/13/17	LRE	
Jose, Corey	4th Grade Teacher Returned from Maternity Leave, 12/5/16	CRE	
Morales, Kassandra	Teacher Development Specialist Salary Correction, M+15&17, effective 8/3/16	HRE/HPE	
Murakami, Greg	Special Education Teacher For Laura Brown's Maternity Leave 1/2/17 through 2/3/17	HHS	M&5
Murray, Ryan	Physical Education Teacher, .5 perm, .5 temp .5 for Kristin Panning's Maternity Leave	SCI	

**Consent Agenda
December 14, 2016**

Certified Staff Name	Position	Building	Rate
	End of .5 Temporary Position, 12/1/16		
Otto, Meghan	2nd Grade Teacher Temporary For Shannon Edwards' Maternity Leave 11/28/16 through 2/20/17	HRE	B&0
Panning, Kristin	Physical Education Teacher Returned from Maternity Leave, 12/1/16	SCI	
Peters, Paula	4th Grade Teacher Temporary End of Temporary Position, 12/2/16	CRE	
Pogue, Ashley	2nd Grade Teacher Maternity Leave, 4/10/17 through 5/26/17	FES	
Pritchard, Jenna	Homebound Instructor 12/1/16	FHS	per hourly rate
Ruiz, Amy	Special Education Teacher Replacing Lindsay Matern, 1/3/17	SCI	B&0
Runge, Tina	1st Grade Teacher Temporary Resignation, 12/16/16	FES	
Smith, Randall	Social Studies Teacher Replacing Bob Hoffman, 1/2/17	FHS	B&9
Staal, Will	Girls JV Basketball Coach 10/17/16	FHS	15% of ECA base
Sugg, Brittany	1st Grade Teacher Temporary For Jayme Lane's Maternity Leave 1/2/17 through 5/26/17	FES	B&0
Wagoner, Neil	Social Studies Teacher Temporary For Katie Gelhar's Medical Leave 11/22/16 through 12/16/16	HHS	1st 15 days sub pay then B&0
Employee #10042	Teacher 5 days of suspension, unpaid		

**Consent Agenda
December 14, 2016**

**Certified Staff
Name**

Position

Building Rate

29D03-1806-MI-005244
Hamilton Superior Court 3

Filed: 6/8/2018 11:00 AM
Tammy Baitz
Clerk
Hamilton County, Indiana

EXHIBIT B

From: Bourff, Allen [mailto:abourff@hse.k12.in.us]

Sent: Thursday, January 05, 2017 4:29 PM

To: Bob Segall

Subject: Inquiry into 12/14/16 Board Action

Hamilton Southeastern Schools maintains the confidentiality of personnel matters. Pursuant to Indiana Code § 5-14-3-4(b)(8)(c), the board action for which you inquired was due to not implementing instructions for classroom management strategies.

Sent from Mail for Windows 10

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29D03-1806-MI-005244
Hamilton Superior Court 3

Filed: 6/8/2018 11:00 AM
Tammy Baitz
Clerk
Hamilton County, Indiana

EXHIBIT C

Bob Segall

From: Bob Segall
Sent: Friday, January 06, 2017 10:12 AM
To: Bourff, Allen
Cc: Bob Segall; Mike Wilkins
Subject: RE: Inquiry into 12/14/16 Board Action

Importance: High

Good morning, Dr. Bourff.

I wanted to follow up on our conversation and emails from yesterday. This morning, I had a chance to speak with Indiana's Public Access Counselor Luke Britt regarding the response that I received yesterday from HSE. He confirmed my suspicion that the information you provided yesterday regarding my inquiry does not fulfill the school district's obligations under IC 5-14-3-4(b)(8)(c), which requires HSE to publicly disclose "the factual basis for a disciplinary action in which final action has been taken and that resulted in the employee being suspended, demoted, or discharged."

Mr. Britt strongly agrees with me that simply stating "the board action for which you inquired was due to not implementing instructions for classroom management strategies" does not sufficiently identify the factual basis for the actions that resulted in the employee's discipline. While Mr. Britt indicated a detailed "play-by-play" account of an incident is not required under state statute, he did state that "the school district's response is too vague and does not give a reasonable idea for why the employee was suspended." He went on to clarify by stating "The district must give some degree of specificity about what actually happened, and if the employee violated a policy or specific instructions or a work improvement plan, they should identify what policy, instructions or plan were not followed."

He also indicated that the school district is required under IC 5-14-3-4(b)(8) to name the employee who was suspended – not simply provide an employee number.

For the reasons stated above, I am again asking that you provide:

1. The factual basis for the teacher suspension that the HSE board voted to approve on December 14, 2016. I would request that the information include the date(s) of the teacher action(s) that resulted in the suspension, any policies or instructions that were violated or not followed by the employee, and a more detailed explanation of the behavior/action(s) that prompted the disciplinary action.
2. Information relating to the status of any additional discipline that HSE has taken related to this employee during the time of the employee's employment with the school district.
3. The name and job title of employee #10042 who received "5 days of suspension, unpaid."

I am requesting that you provide this information by 12:00pm (noon) on Monday, January 9, 2017. My hope is to include all of the requested information in one single news story to avoid reporting on this issue repeatedly over the course of many weeks or months. It is also my hope that HSE will provide the requested public information in a timely manner to avoid the need for me to file a formal complaint with the Indiana Public Access Counselor, which would also result in additional reporting on this issue. While I understand and appreciate the desire of the school district to maintain the confidentiality of personnel matters, I hope you will also provide sufficient transparency on disciplinary matters, which is mandated under state law.

Please do not hesitate to contact me at 317-408-3397 if you have any questions about my request or wish to discuss it in more detail.

Thank you again for your assistance,

Bob Segall



From: Bourff, Allen [mailto:abourff@hse.k12.in.us]

Sent: Thursday, January 05, 2017 4:29 PM

To: Bob Segall

Subject: Inquiry into 12/14/16 Board Action

Hamilton Southeastern Schools maintains the confidentiality of personnel matters. Pursuant to Indiana Code § 5-14-3-4(b)(8)(c), the board action for which you inquired was due to not implementing instructions for classroom management strategies.

Sent from Mail for Windows 10

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Tammy Baitz
Clerk
Hamilton County, Indiana

EXHIBIT D

From: Redmond, Bev [mailto:bevredmond@hse.k12.in.us]
Sent: Monday, January 09, 2017 4:22 PM
To: Bob Segall
Subject: Response from HSE
Importance: High

Bob,

Please see HSE Schools' response to your request below:

Hamilton Southeastern Schools respects the privacy of our students and employees. Consistent with that, we do not reference employees engaged in disciplinary action by name. On December 14, 2016, the Board of School Trustees approved its first personnel report utilizing employee numbers. That report references a suspension for an employee due to not following Board of School Trustees Policy G02.06.

Beverly Redmond

Director of School & Community Relations

Hamilton Southeastern Schools

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Hamilton Superior Court 3

Filed: 6/8/2018 11:00 AM
Tammy Baitz
Clerk
Hamilton County, Indiana

EXHIBIT E



Book	HSE Policy
Section	Section G: Personnel
Title	Staff Conduct
Number	G02.06
Status	Active
Legal	I.C. 20-6.1-4-10, 20-6.1-4-10.5, 20-6.1-4-12
Adopted	November 1, 1998
Last Revised	April 27, 2015
Last Reviewed	April 27, 2015

The Board of School Trustees expects that the staff of the school corporation will strive to set the kind of example for students that will serve them well in their own conduct. Staff will demonstrate behaviors which contribute toward an appropriate school atmosphere.

In dress, conduct, and interpersonal relationships, all staff should recognize that they are being continuously observed by students and that their actions and demeanor will be reflected in the conduct of the students.

The personal life of an employee will be the concern and warrant the attention of the Board only to the extent that it prevents the employee from effectively performing assigned functions during duty hours, or if it violates applicable law or contractual agreements.

The Board has approved a Memorandum of Understanding with the local law enforcement agency that allows for the process of sharing information concerning the employees of Hamilton Southeastern Schools who are involved in alleged criminal acts. This sharing of information occurs when either party believes it is in the best interest of the employee or in the best interest of the safety and welfare of the community.

Employee Disclosure of Criminal Arrests and Criminal Charges:

Any employee subject to this policy is required to report any criminal arrest or the filing of any criminal charge that is related to the following: drugs or alcohol, physical violence, sexual conduct, damage to property, or theft or other dishonest conduct. The employee's reporting obligation applies as long as the employee remains employed by Hamilton Southeastern Schools and includes any criminal arrest or criminal charge that occurs during non-work times such as weekends, holidays, and spring and summer break.

For purposes of this policy, a criminal arrest shall include being issued a criminal citation or being taken into custody by law enforcement officer for any of the above-described reasons.

The employee must report any criminal arrest or criminal charge to the Human Resources Department in writing within two working days of the date of the arrest or criminal charge filing. The employee must include the alleged offense, the date of the arrest or criminal charge, and the presiding court or law enforcement agency. The employee should not include any factual details concerning the nature of the alleged offense.

Failure to comply with this policy may result in disciplinary action up to and including termination.

29D03-1806-MI-005244

Hamilton Superior Court 3

Filed: 6/8/2018 11:00 AM
Tammy Baltz
Clerk
Hamilton County, Indiana

EXHIBIT F



Mr. Luke Britt
Indiana Public Access Counselor
Indiana Government Center South
402 West Washington Street W074
Indianapolis, IN 46204

January 12, 2017

Dear Mr. Britt,

I am filing a formal complaint alleging the Hamilton Southeastern School District has violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 by denying WTTH access to public information related to HSE disciplinary action against a teacher that the school district has improperly withheld.

Background

On January 5, 2017, I spoke to HSE superintendent Allen Bourff to request information about a teacher suspension that the HSE Board of Education voted to approve at its December 14, 2016 board meeting. During our phone conversation, I requested he provide me with the name of the employee who had been suspended (the meeting agenda listed only the individual's employee ID number), facts establishing the grounds for the suspension, the date of the suspension, the date of the incident(s) for which the discipline was deemed necessary, and whether the discipline involved a specific teacher who had been involved in a specific high-profile incident that WTTH had previously reported several months earlier. The superintendent told me he would check with the school district's legal counsel and, later that same afternoon, he e-mailed me following statement:

Hamilton Southeastern Schools maintains the confidentiality of personnel matters. Pursuant to Indiana Code § 5-14-3-4(b)(8)(c), the board action for which you inquired was due to not implementing instructions for classroom management strategies.

I responded to Dr. Bourff's e-mail 13 minutes later to ask for additional information that had not been provided – specifically, the name of the employee, the factual basis for the suspension and the dates involved. I did not receive a reply by the morning of December 6, so after consulting with your office, I again reached out to the superintendent to explain that his failure to provide basic facts about the teacher suspension appeared to violate the same APRA code he referenced in his e-mail. I asked that he respond to my request by noon on January 9, 2017. He did not, and I have not heard from the superintendent since.

In the early afternoon of January 9, I contacted HSE community relations director Beverly Redmond to ask for her assistance. I explained my conversation and subsequent e-mail exchange with the superintendent and again asked that the school district provide the factual basis for the teacher suspension, along with the teacher's name, date(s) of the suspension and related incident. Later that afternoon, Ms. Redmond e-mailed me the following statement:

Bob,

Please see HSE Schools' response to your request below:

Hamilton Southeastern Schools respects the privacy of our students and employees. Consistent with that, we do not reference employees engaged in disciplinary action by name. On December 14, 2016, the Board of School Trustees approved its first personnel report utilizing employee numbers. That report references a suspension for an employee due to not following Board of School Trustees Policy G02.06.

The vague statement again failed to provide a factual basis for the employee's suspension, including a name and date(s) of the suspension and incident(s) that precipitated it. I e-mailed and spoke via phone with Ms. Redmond to again explain my concerns that the response from HSE did not provide the level of transparency required by APRA and to request additional information. During our phone conversation, she did provide me with the name of "Employee #10041" who was suspended by the Board. Ms. Redmond also followed up with an e-mail that included a copy of the school policy (G02.06) mentioned in her previous e-mail. She would not, however, provide the factual basis for the suspension (beyond vague and contradictory information already sent via e-mails), the date(s) of the suspension or the date(s) of the incident that prompted the board to issue discipline.

Alleged violation

The Hamilton Southeastern School District improperly withheld information that must be publicly disclosed under IC 5-14-3-4(b)(8)(c), which requires a public agency (in this case, a school district) to publicly disclose "the factual basis for a disciplinary action in which final action has been taken and that resulted in the employee being suspended, demoted, or discharged."

In this case, it is clear final action has been taken and that the action resulted in the employee being suspended. (The Board voted on December 14, 2016, to approve the proposed 5-day suspension.) What is not clear is a factual basis for the disciplinary action.

HSE attempted to meet this legal burden twice by providing extremely vague and contradictory information that falls short of explaining a factual basis. The statement provided by Ms. Redmond on January 9 indicates the employee was suspended "due to not following Board of School Trustees Policy G02.06." A closer look at that policy, which HSE provided to WTHR upon our request, shows numerous standards which must be followed by HSE staff. According to this general policy, which is titled "Staff Conduct," the employee could have been suspended for:

- OR Not setting "the kind of example for students that will serve them well in their own conduct"
- OR Not demonstrating "behaviors which contribute toward an appropriate school atmosphere"
- OR Wearing inappropriate dress
- OR Engaging in inappropriate conduct
- OR Improper behavior in an interpersonal relationship
- OR Engaging in personal activity that "prevents the employee from effectively performing assigned tasks during duty hours"
- OR Engaging in personal activity that violates applicable law
- OR Engaging in personal activity that violates contractual agreements
- OR Failing to report any criminal arrest or the filing of any criminal charge related to drugs or alcohol
- OR Failing to report any criminal arrest or the filing of any criminal charge related to physical violence
- OR Failing to report any criminal arrest or the filing of any criminal charge related to sexual conduct
- OR Failing to report any criminal arrest or the filing of any criminal charge related to damage to property
- OR Failing to report any criminal arrest or the filing of any criminal charge related to theft
- OR Failing to report any criminal arrest or the filing of any criminal charge related to other dishonest conduct

This policy is vague enough to cover thousands of actions that, at the Board's discretion, could be deemed the factual basis for an employee suspension. By citing this policy as the factual basis for the discipline, HSE is providing no greater factual basis than if it has simply disclosed "The employee was suspended for violating a school district rule."

The school district's response is also contradictory in that an earlier e-mail from the superintendent stated that the employee suspension was "due to not implementing instructions for classroom management strategies." That is not one of the stated conducts listed in Policy G02.06, which was later provided as the factual basis for the suspension.

In criminal law, a factual basis is a statement of the facts detailing an individual crime and its particulars. In journalism, facts are generally considered to include details surrounding six specific areas: Who, What, When, Where, Why and How. I will address the "Who" in a moment. Regarding the other factual areas surrounding the suspension, HSE has provided no dates (for either the suspension or the incident(s) that prompted it), nor has it disclosed the location or general circumstances surrounding the event that warranted discipline. I understand the school district is not required to release extremely specific details of an incident that results in disciplinary action. But failing to provide any details falls short of the APRA requirement to provide a factual basis.

While the school district eventually did release the name of the employee to WTHR, it is worth noting that the school district says it "does not reference employees engaged in disciplinary action by name. On December 14, 2016, the Board of School Trustees approved its first personnel report utilizing employee numbers." From an APRA standpoint, this is troubling for several reasons.

First, the school district historically does reference employees engaged in disciplinary action by name, as it is required to do under state law. I have included several HSE school board consent agendas (1/14/13, 10/13/14, 5/11/15, 11/21/16) that show HSE employees named when they board voted on their discipline. These agendas also include the dates of the suspensions – information that is not being publicly released for the incident for which WTHR has requested clarity. HSE's statement is not consistent with its prior actions, and its current disclosure – involving a high-profile employee in its school district – falls short of its disclosure on other employees.

Second, it appears the board changed its public disclosure policy on December 14, 2016 -- just in time to vote on a particular employee whose discipline the board wanted to keep confidential by including only his employee number rather than his name in the public record. By acknowledging that this is a new policy adopted by the school district, HSE is suggesting it plans to routinely violate APRA in the future by not disclosing the names of employees who are subject to final action that will be taken and that will result in an employee being suspended, demoted, or discharged.

Based on the facts of this complaint, I respectfully request the Public Access Counselor find Hamilton Southeastern Schools has violated the Access to Public Records Act by not disclosing a sufficient factual basis for the employee suspension approved by its Board of Education on December 14, 2016.

Thank you for your time and assistance. Please feel free to contact me at 317-408-3397 or bsegall@wthr.com if you have any questions or need additional information.

Regards,



Bob Segall
Senior investigative reporter
WTHR-TV
1000 N. Meridian St.
Indianapolis, IN 46204

29D03-1806-MI-005244

Hamilton Superior Court 3

Filed: 6/8/2018 11:00 AM
Tammy Baltz
Clerk
Hamilton County, Indiana

EXHIBIT G



STATE OF INDIANA

ERIC J. HOLCOMB, Governor

**PUBLIC ACCESS COUNSELOR
LUKE H. BRITT**

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Website: www.IN.gov/pac

OPINION OF THE PUBLIC ACCESS COUNSELOR

BOB SEGALL,

Complainant

v.

**HAMILTON SOUTHEASTERN
SCHOOL DISTRICT
Respondent**

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17-FC-09

**ADVISORY OPINION
March 3, 2017**

This advisory opinion is in response to the formal complaint alleging Hamilton Southeastern School District ("HSE") violated the Access to Public Records Act ("APRA"), Indiana Code § 5-14-1.5-1 et. seq. HSE has responded via Mr. Seamus Boyce, Esq., the attorney for the school district. 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 17, 2017.

BACKGROUND

The formal complaint filed on January 13, 2017 alleges the Hamilton Southeastern School District violated the APRA by providing too little information pursuant to a complaint.

The Complainant made a verbal request for documents on January 5, 2017 in regards to information about a teacher suspension which the HSE School Board voted to approve at its December 14, 2016 board meeting. The Complainant requested the name (the meeting agenda listed only the individual's ID number), facts establishing the grounds for suspension, the date of suspension and the date of the incidents(s) for which discipline was deemed necessary. The same day the Complainant received an email stating HSE "maintains the confidentiality of personnel matters. Pursuant to Indiana Code § 5-14-3-4(b)(8)(c), the board action for which you inquired was due to not implementing instructions for classroom management strategies".



STATE OF INDIANA

ERIC J. HOLCOMB, Governor

PUBLIC ACCESS COUNSELOR
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Website: www.IN.gov/pac

In further email correspondence, HSE informed the Complainant that the Board of Trustees during the December 14, 2016 meeting approved a personnel report utilizing employee numbers and the suspension was due to not following Board of School Trustees Policy G02.06. No factual basis or name and date(s) of suspension was released. A copy of the policy reference was supplied, with no other indication which specific section was violated by the suspended teacher.

HSE argues in its response the description of the employee's actions satisfy the APRA by stating the policy and a brief statement regarding the incident. HSE cites several prior Public Access Counselor opinions justifying its position; however, it remains open to this Office's recommendations.

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 Hamilton Southeastern School District is a public agency for the purposes of the APRA. *See Indiana Code § 5-14-3-2(n)*. Accordingly, any person has the right to inspect and copy the HSE'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)*.

Pursuant to Indiana Code § 5-14-3-4(b)(8) personnel files are not disclosable except for:

- (A) the name, compensation, job title, business address, business telephone number, job description, education and training background, previous work experience, or dates of first and last employment of present or former officers or employees of the agency
- (B) information relating to the status of any formal charges against the employee; and
- (C) the factual basis for a disciplinary action in which final action has been taken and that resulted in the employee being suspended, demoted, or discharged.

The name was subsequently released. But as HSE correctly states, factual basis is not defined in the APRA and accordingly, HSE has given a general, non-specific response to a request for a factual basis which led to suspension.



STATE OF INDIANA

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The law is clear civil servants are entitled to a certain expectation of privacy in regard to their personnel file, and rightfully so. Even though they are accountable to the public in a different way than their private sector counterparts, good management and human resources practices dictate public employees should enjoy some confidentiality as it relates to their employment information. This privilege is eroded to an extent, however, when the employee engages in activities or insufficient performance of duties that would lead to discipline. As they are stewards of the public's trust, deficiencies in their duties warrant disclosure, in order that taxpayers are aware of how their resources are being utilized.

Therefore, when evaluating how much information to release pursuant to a public records request, an agency must strike a balance between privacy expectations of the employee and government transparency considerations. This is not easy to accomplish. Furthermore, the sensitivity of student privacy comes into play when the public employee is employed by a School. Say too much and the public may be able to extrapolate student information; say too little and an agency runs the risk of being opaque.

I do not fault HSE for being careful and issuing a vague statement; however, I do believe the response leans toward lacking sufficient detail. HSE has cited prior opinions from this Office, but they were highly fact sensitive. One involved an attorney who was fired for "lack of skill set and judgment". I went on to opine:

The civil servant in question was also employed by the City as an attorney. Attorney's skill set and judgment are critical to their employability. Using sound judgment and possessing a specific set of skills is germane to their job performance.

See Opinion of the Public Access Counselor 15-FC-217.

Given that the firing in that situation was surrounding a court proceeding – a fact known by the requester at the time of the document request – it could reasonably be concluded the attorney lacked the skills to be effective in the courtroom. This factual basis gives sufficient detail without going into esoteric specifics about performance. The reader of the factual basis could deduce enough information to identify the root cause of the employee's shortcomings.

I do not believe that is the case in this situation, "Not implementing instructions for classroom management strategies" could encompass any number of performance deficiencies. Even buttressed by the subsequent release of the Board Trustee Policy, the information does not provide a factual basis for the underlying deviation from an ascertainable standard of performance. As the Complainant notes, based on the provided policy, the employee could have been cited for a list of violations rather than one



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Email: pac@in.gov/opac
Website: www.IN.gov/pac

concrete benchmark. A reader of a factual basis should have some tangible indication as to why a public employee is disciplined.

Factual basis contemplates at least a fact. I would argue that a fact equates to a detail specific to an incident or set of incidents. Without the benefit of knowing the circumstances surrounding the incident, it is difficult for me to suggest a recommended factual basis statement. I trust HSE will take these considerations under advisement and craft a factual basis which strikes a balance between employee-student privacy expectations and a reasonably transparent description of what actually took place.

Luke H. Britt

A handwritten signature in black ink, appearing to read "LHB", written over a horizontal line.

Public Access Counselor

Cc: Mr. Séamus Boyce, Esq.

29D03-1806-MI-005244

Hamilton Superior Court 3

Filed: 6/8/2018 11:00 AM
Tammy Baltz
Clerk
Hamilton County, Indiana

EXHIBIT H

church church hittle + antrim
ATTORNEYS AT LAW

March 23, 2017

Mr. Bob Segall
WTHR Senior Investigative Reporter
Via email: bsegall@wthr.com

Mr. Segall:

I write you on behalf of Hamilton Southeastern Schools (HSE). I am responding to your clarification that your recent inquiry about employee discipline was not a new request. You clarified that it was the same request and the subject of the recent Public Access Counselor opinion.

Given your clarification and the Public Access Counselor's opinion that HSE has not violated Indiana Code § 5-14-3-4(b)(8)(c), providing more detail in regard to your inquiry is both not required by the referenced code provision and prohibited by Indiana Code § 5-14-3-4(a)(3). Any more detail would compromise what is protected by the Family Educational Rights & Privacy Act (FERPA).

Please direct any further inquiries of HSE to me.

Sincerely,

Church Church Hittle + Antrim



Séamus P. Boyce
Attorney for Hamilton Southeastern Schools

cch+a

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Hamilton Superior Court 3

Filed: 6/8/2018 11:00 AM
Tammy Baitz
Clerk
Hamilton County, Indiana

EXHIBIT I



Mr. Luke Britt
Indiana Public Access Counselor
Indiana Government Center South
402 West Washington Street W074
Indianapolis, IN 46204

April 10, 2017

Dear Mr. Britt,

I am filing a formal complaint alleging the Hamilton Southeastern School District has violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 by denying WTHR access to public information related to HSE disciplinary action against a teacher that the school district has improperly withheld. This is the second complaint filed against HSE for this violation, triggered by HSE's decision to disregard the Public Access Counselor's recommendations in Public Access Counselor Advisory Opinion 17-FC-09 and to continue to withhold information that is not excepted from APRA's disclosure requirements.

Background

On January 5, 2017, I spoke to HSE superintendent Allen Bourff to request information about a teacher suspension that the HSE Board of Education voted to approve at its December 14, 2016 board meeting. During our phone conversation, I requested he provide me with the name of the employee who had been suspended (the meeting agenda listed only the individual's employee ID number), facts establishing the grounds for the suspension, the date of the suspension, the date of the incident(s) for which the discipline was deemed necessary, and whether the discipline involved a specific teacher who had been involved in a specific high-profile incident that WTHR had previously reported several months earlier. The superintendent told me he would check with the school district's legal counsel and, later that same afternoon, he e-mailed me following statement:

Hamilton Southeastern Schools maintains the confidentiality of personnel matters. Pursuant to Indiana Code § 5-14-3-4(b)(8)(c), the board action for which you inquired was due to not implementing instructions for classroom management strategies.

I responded to Dr. Bourff's e-mail 13 minutes later to ask for additional information that had not been provided – specifically, the name of the employee, the factual basis for the suspension and the dates involved. I did not receive a reply by the morning of December 6, so after consulting with your office, I again reached out to the superintendent to explain that his failure to provide basic facts about the teacher suspension appeared to violate the same APRA code he referenced in his e-mail. I asked that he respond to my request by noon on January 9, 2017. He did not, and I have not heard from the superintendent since.

In the early afternoon of January 9, I contacted HSE community relations director Beverly Redmond to ask for her assistance. I explained my conversation and subsequent e-mail exchange with the superintendent and again asked that the school district provide the factual basis for the teacher suspension, along with the teacher's name, date(s) of the suspension and related incident. Later that afternoon, Ms. Redmond e-mailed me the following statement:

*Bob,
Please see HSE Schools' response to your request below:
Hamilton Southeastern Schools respects the privacy of our students and employees. Consistent with that, we do not reference employees engaged in disciplinary action by name. On December 14, 2016, the Board of School Trustees approved its first personnel report utilizing employee numbers. That report references a suspension for an employee due to not following Board of School Trustees Policy G02.06.*

The vague statement again failed to provide a factual basis for the employee's suspension, including a name and date(s) of the suspension and incident(s) that precipitated it. I e-mailed and spoke via phone with Ms. Redmond to again explain my concerns that the response from HSE did not provide the level of transparency required by APRA and to request additional information. During our phone conversation, she did provide me with the name of "Employee #10041" who was suspended by the Board. Ms. Redmond also followed up with an e-mail that included a copy of the school policy (G02.06) mentioned in her previous e-mail. She would not, however, provide the factual basis for the suspension (beyond vague and contradictory information already sent via e-mails), the date(s) of the suspension or the date(s) of the incident that prompted the board to issue discipline.

On January 13, 2017, I filed an APRA complaint against the Hamilton Southeastern School District on behalf of WTHR, alleging HSE failed to meet its statutory obligations by withholding information sufficient to establish a factual basis for the employee's suspension. HSE, through its legal counsel Seamus Boyce, responded to the APRA complaint on March 3, 2017, stating that its previous response to WTHR "complies with the APRA" and requesting that the Public Access Counselor find that HSE did not commit a violation of APRA. The school district also requested guidance from the Public Access Counselor on how to balance privacy and transparency considerations in these types of matters.

On March 3, 2017, your office released Advisory Opinion 17-FC-09, indicating that while the Public Access Counselor "[does] not fault HSE for being careful and issuing a vague statement," you found HSE's response "lacking sufficient detail" and that the information provided by the school district "does not provide a factual basis for the underlying deviation from an ascertainable standard of performance." You encouraged HSE to "craft a factual basis which strikes a balance between employee-student privacy expectations and a reasonably transparent description of what actually took place."

Based on the Advisory Opinion, WTHR contacted Mr. Boyce and HSE to request that the school district follow your recommendation and that it release a more specific factual basis for the teacher suspension approved months earlier by the HSE school board. Mr. Boyce and HSE did not heed that recommendation and declined to provide any additional information to establish a sufficient factual basis for the discipline. In his March 23, 2017, response, Mr. Boyce stated "Given your clarification and the Public Access Counselor's opinion that HSE had not violated Indiana Code § 5-14-3-4(b)(8)(c), providing more detail in regard to your inquiry is both not required by the referenced code provision and prohibited by Indiana Code § 5-14-3-4(a)(3). Any more details would compromise what is protected by the Family Educational Rights 7 Privacy Act (FERPA)."

Alleged violation

WTHR appreciates the Public Access Counselor's reasoning and position in Advisory Opinion 17-FC-09. We recognize that in these types of cases, there may be legitimate privacy interests involving both teachers and students that must be balanced with the public's right to know why employees whose salaries are funded by public tax dollars are disciplined when they fail to meet expectations. We also understand that "factual basis" is not clearly defined in APRA. For that reason, we can both understand and appreciate the Public Access Counselor's decision to issue an advisory opinion that gave HSE an opportunity to provide additional information to meet its obligations under APRA. HSE has since ignored the recommendations of the Public Access Counselor, despite a finding that the school district's previous response was "lacking sufficient details" and that it "does not provide a factual basis" as required by § 5-14-3-4(b)(8)(c).

Rather than heeding your request for HSE to provide more information that would allow the school district to meet its legal obligation, HSE has instead chosen to provide no additional information, no additional insight, no additional facts to remedy the purposefully vague and insufficient explanation it previously provided in lieu of a true factual basis. The Public Access Counselor's clearly-stated opinion that HSE's response does not meet what would be considered a logical interpretation of "factual basis" has, to date, yielded no results whatsoever.

Thus far, your interpretation and analysis of the public access law regarding § 5-14-3-4(b)(8)(c) finds:

1. HSE is required to disclose "the factual basis for a disciplinary action in which final action has been taken and that resulted in the employee being suspended, demoted or discharged."
2. "As [public employees] are stewards of the public's trust, deficiencies in their duties warrant disclosure, in order that taxpayers are aware of how their resources are being utilized."

3. "HSE has given a general, non-specific response to a request for a factual basis which led to suspension."
4. The disclosure (factual basis) provided by HSE "leans toward lacking sufficient detail."
5. HSE's disclosure "does not provide a factual basis for the underlying deviation from an ascertainable standard of performance."
6. "A reader of a factual basis should have some tangible indication as to why a public employee is disciplined," which is not ascertainable based upon the current disclosure.
7. "Factual basis contemplates at least a fact" and "a fact equates to a detail specific to an incident or a set of incidents." HSE has not provided a detail specific to an incident or set of incidents and refuses to do so.

Despite your solid reasoning and your good faith request to HSE to work with WTHR and the Public Access Counselor to provide more basic information, HSE's chosen strategy has been just the opposite – stating it is "not required" to release any additional clarifying information. WTHR believes that strategy violates both the spirit and the letter of § 5-14-3-4(b)(8)(c). We believe it is appropriate for your office to find HSE has violated APRA and to provide an opinion that further clarifies the meaning of "factual basis." It is WTHR's hope that such clarification will also serve as a recommendation to the Indiana General Assembly and that the legislature would use such guidance to further amend APRA to help avoid continued abuses of § 5-14-3-4(b)(8)(c).

HSE continues to leave out most of the basic elements used to establish a fact: Who, What, When, Where, Why and How. Providing only a "who" (as is the case with HSE's disclosure) provides little foundation for establishing a factual basis. WTHR would argue that even providing the "what" is insufficient to establish a factual basis. The "when" and "where" are also crucial elements of establishing a fact – even in situations where the more subjective "why" and "how" have not or cannot be determined. (WTHR has repeatedly requested that the school district release the date(s) of the incident(s) that prompted the teacher discipline, but that detail – which clearly helps establish a factual basis without jeopardizing any staff or student privacy – has been denied each time.) WTHR would request that any further clarification of "factual basis" provided by your office would address these factors, as well.

Citing state and federal law that is not applicable

In its March 23, 2017, response to WTHR, in which HSE declines to provide more details to establish a factual basis for the teacher's suspension, Mr. Boyce claims that release of a more detailed factual basis is:

prohibited by Indiana Code § 5-14-3-4(a)(3). Any more details would compromise what is protected by the Family Educational Rights & Privacy Act (FERPA).

The Respondent makes this baseless claim while offering no evidence or proof that releasing additional details would in any way compromise student privacy protected by FERPA and its obligations under federal law.

WTHR is, of course, not asking for student records or the name of any student involved in this case, and the possibility that someone might be able to extrapolate that information based on identifying a specific classroom management strategy is a willful manipulation of FERPA and IC 5-14-3-4(a)(3) to avoid transparency under APRA.

By way of comparison, Indiana hospitals are required under 410 IAC 15-1.4-2 to report to the Indiana State Department of Health under the Hospital Medical Error Reporting Rule. In reporting their medical mistakes, the medical facilities are not permitted to simply state "we erred due to not implementing proper medical care." State law requires the hospitals specify the type of medical event/procedure involved in the error, the timeframe and where the event occurred. At the same time, federal law clearly prohibits hospitals from releasing Protected Health Information that would violate the privacy of their patients under the HIPAA rule. Using Mr. Boyce's logic, hospitals could argue they are not permitted to provide the state with medical mistake information to fulfill their obligations under 410 IAC 15-1.4-2 because doing so would be prohibited by § 5-14-3-4(a)(3) and HIPAA on the grounds that a third party might somehow be able to identify patients based on the reporting. No hospital has made that claim because disclosing information vital to the public interest and meeting obligations to protect patient privacy are not mutually exclusive. HIPAA-protected information is not sought and does not come into play under the Hospital Medical Error Reporting Rule. Likewise, HSE can release a *real* factual basis for a teacher suspension – including actual facts that would help clarify why the disciplinary action was taken – without jeopardizing

the privacy of students attending the school. WTHR is not requesting any information that would endanger student privacy and that might come into play under Indiana Code § 5-14-3-4(a)(3) or FERPA.

Lacking any legitimate proof to support its FERPA claim, it appears HSE is grasping for legal strategies to withhold information it is required to release under APRA.

Previous arguments still applicable

For the sake of this complaint, WTHR renews each of its original arguments to establish both the facts of the violation and a pattern of behavior in denying a factual basis. Those arguments are once again presented as follows:

As previously argued, the Hamilton Southeastern School District improperly withheld information that must be publicly disclosed under IC 5-14-3-4(b)(8)(c), which requires a public agency (in this case, a school district) to publicly disclose "the factual basis for a disciplinary action in which final action has been taken and that resulted in the employee being suspended, demoted, or discharged."

It is clear final action has been taken and that the action resulted in the employee being suspended. (The Board voted on December 14, 2016, to approve the proposed 5-day suspension.) What is not clear is a factual basis for the disciplinary action.

HSE attempted to meet this legal burden twice by providing extremely vague and contradictory information that falls short of explaining a factual basis. The statement provided by Ms. Redmond on January 9 indicates the employee was suspended "due to not following Board of School Trustees Policy G02.06." A closer look at that policy, which HSE provided to WTHR upon our request, shows numerous standards which must be followed by HSE staff. According to this general policy, which is titled "Staff Conduct," the employee could have been suspended for:

- OR Not setting "the kind of example for students that will serve them well in their own conduct"
- OR Not demonstrating "behaviors which contribute toward an appropriate school atmosphere"
- OR Wearing inappropriate dress
- OR Engaging in inappropriate conduct
- OR Improper behavior in an interpersonal relationship
- OR Engaging in personal activity that "prevents the employee from effectively performing assigned tasks during duty hours"
- OR Engaging in personal activity that violates applicable law
- OR Engaging in personal activity that violates contractual agreements
- OR Failing to report any criminal arrest or the filing of any criminal charge related to drugs or alcohol
- OR Failing to report any criminal arrest or the filing of any criminal charge related to physical violence
- OR Failing to report any criminal arrest or the filing of any criminal charge related to sexual conduct
- OR Failing to report any criminal arrest or the filing of any criminal charge related to damage to property
- OR Failing to report any criminal arrest or the filing of any criminal charge related to theft
- OR Failing to report any criminal arrest or the filing of any criminal charge related to other dishonest conduct

This policy is vague enough to cover thousands of actions that, at the Board's discretion, could be deemed the factual basis for an employee suspension. By citing this policy as the factual basis for the discipline, HSE is providing no greater factual basis than if it has simply disclosed "The employee was suspended for violating a school district rule."

The school district's response is also contradictory in that an earlier e-mail from the superintendent stated that the employee suspension was "due to not implementing instructions for classroom management strategies." That is not one of the stated conducts listed in Policy G02.06, which was later provided as the factual basis for the suspension.

In criminal law, a factual basis is a statement of the facts detailing an individual crime and its particulars. In journalism, facts are generally considered to include details surrounding six specific areas: Who, What, When, Where, Why and How. I will address the "Who" in a moment. Regarding the other factual areas surrounding the suspension, HSE has provided no dates (for either the suspension or the incident(s) that prompted it), nor has it disclosed the location or general circumstances surrounding the event that warranted discipline. I understand the school district is not required to release extremely specific details of an incident that results in disciplinary action. But failing to provide any details falls short of the APRA requirement to provide a factual basis.

While the school district eventually did release the name of the employee to WTHR, it is worth noting that the school district says it "does not reference employees engaged in disciplinary action by name. On December 14, 2016, the Board of School Trustees approved its first personnel report utilizing employee numbers." From an APRA standpoint, this is troubling for several reasons.

First, the school district historically does reference employees engaged in disciplinary action by name, as it is required to do under state law. I have included several HSE school board consent agendas (1/14/13, 10/13/14, 5/11/15, 11/21/16) that show HSE employees named when they board voted on their discipline. These agendas also include the dates of the suspensions – information that is not being publicly released for the incident for which WTHR has requested clarity. HSE's statement is not consistent with its prior actions, and its current disclosure – involving a high-profile employee in its school district – falls short of its disclosure on other employees.

Second, it appears the board changed its public disclosure policy on December 14, 2016 -- just in time to vote on a particular employee whose discipline the board wanted to keep confidential by including only his employee number rather than his name in the public record. By acknowledging that this is a new policy adopted by the school district, HSE is suggesting it plans to routinely violate APRA in the future by not disclosing the names of employees who are subject to final action that will be taken and that will result in an employee being suspended, demoted, or discharged.

Based on the facts of this complaint, I respectfully request the Public Access Counselor find Hamilton Southeastern Schools has violated the Access to Public Records Act by failing to disclose a sufficient factual basis for the employee suspension approved by its Board of Education on December 14, 2016, and by ignoring your office's request in Advisory Opinion 17-FC-09 to craft a factual basis that provides "a reasonably transparent description of what actually took place."

Thank you for your time and assistance. Please feel free to contact me at 317-408-3397 or bsegall@wthr.com if you have any questions or need additional information.

Regards,



Bob Segall
Senior investigative reporter
WTHR-TV
1000 N. Meridian St.
Indianapolis, IN 46204

Delivered via email with supplemental materials attached

29D03-1806-MI-005244
Hamilton Superior Court 3

Filed: 6/8/2018 11:00 AM
Tammy Baltz
Clerk
Hamilton County, Indiana

EXHIBIT J



STATE OF INDIANA

ERIC J. HOLCOMB, Governor

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OPINION OF THE PUBLIC ACCESS COUNSELOR

BOB SEGALL,

Complainant

v.

**HAMILTON SOUTHEASTERN
SCHOOL DISTRICT**

Respondent

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17-FC-81

**ADVISORY OPINION
May 30, 2017**

This advisory opinion is in response to the formal complaint alleging the Hamilton Southeastern District ("HSE") violated the Access to Public Records Act ("APRA"), Indiana Code § 5-14-1.5-1 et. seq. This office notified HSE of the complaint on April 11, 2017. HSE responded on May 26, 2017. 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 April 11, 2017.

BACKGROUND

The formal complaint filed on April 11, 2017, alleges the Hamilton Southeastern School District violated the APRA by providing too little information pursuant to a request. The Complainant's request was a renewal of a previous request, which I discussed in 17-FC-09 and will reference throughout this opinion.

On March 6, 2017, the Complainant made a written request via email for the factual basis for a teacher suspension which the HSE School Board voted to approve at its board meeting on December 14, 2016, and the dates involved. The Complainant said he was renewing his original request from January following my recommendations made in 17-FC-09, requesting the facts establishing the grounds for suspension, the date of suspension and the date of the incidents(s) for which discipline was deemed necessary. When HSE



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responded to the Complainant's original request, HSE first stated that the teacher had been suspended "due to not implementing instructions for classroom management strategies" and in a later statement said that the teacher was suspended "due to not following Board of School Trustees Policy G02.06" and would not provide further detail. The Complainant filed his complaint (17-FC-09) alleging that HSE had not fulfilled its statutory obligations to provide the factual basis for the teacher's suspension. In my advisory opinion, I said that I did not fault HSE for being careful in issuing a vague statement, but I also said that I thought their response leaned towards lacking sufficient detail. *See 17-FC-09*. While I did not find HSE to be in violation of the APRA, I concluded by stating that I trusted HSE to "take these considerations under advisement and craft a factual basis which strikes a balance between employee-student privacy expectations and a reasonably transparent description of what actually took place." *See 17-FC-09*.

Upon receiving the Complainant's new request, HSE responded through its attorney that because I had not found HSE in violation of the APRA in 17-FC-09, HSE was not statutorily obligated to provide further detail and that doing so would compromise records protected by the Family Educational Rights & Privacy Act ("FERPA").

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 Hamilton Southeastern School District is a public agency for the purposes of the APRA. *See Indiana Code § 5-14-3-2(n)*. Accordingly, any person has the right to inspect and copy HSE'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)*.

Pursuant to Indiana Code § 5-14-3-4(b)(8) personnel files are not disclosable except for:

- (A) the name, compensation, job title, business address, business telephone number, job description, education and training background, previous work experience, or dates of first and last employment of present or former officers or employees of the agency
- (B) information relating to the status of any formal charges against the employee; and
- (C) the factual basis for a disciplinary action in which final action has been taken and that resulted in the employee being suspended, demoted, or discharged.



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The name of the suspended teacher was subsequently released to the Complainant. But as HSE correctly states, factual basis is not defined in the APRA and accordingly, HSE has refused to provide any additional detail regarding the factual basis that led to the suspension beyond its first vague response.

Factual Basis

The Complainant suggested that the appropriate measure for a factual basis is the journalistic standard: who, what, when, where, why, and how. HSE responds that a "short, cursory statement" has been the minimum requirement for a factual basis under the APRA since at least 2011, as discussed in 11-FC-149. However, in 16-FC-164, I rejected this standard, stating:

"Factual basis" is not a term of art. It should include actual facts of the misdeeds supporting a policy violation. It does not have to be a detailed narrative or include names of victims or specific summaries, but it should give the reader a reasonable idea of why someone was fired, suspended or demoted.

The only definition of "factual basis" appears in Ind. Code § 35-35-1-3, the statute governing voluntary plea agreements for criminal convictions. While not controlling upon APRA, it is at least instructive to an extent. Courts are not to "enter judgment upon a plea of guilty or guilty but mentally ill at the time of the crime unless it is satisfied from its examination of the defendant or the evidence presented that there is a factual basis for the plea." Ind. Code § 35-35-1-3(c). Like the APRA, factual basis is not defined in this statute, but case law has provided that "[f]actual basis exists when there is evidence about the elements of the crime from which a court could reasonably conclude that the defendant is guilty." *Butler v. State*, 658 N.E.2d 72, 1995. In other words, the "[f]actual basis requirement primarily ensures that when a plea is accepted there is sufficient evidence that a court can conclude that the defendant could have been convicted had he stood trial." *Id.*

I do not consider "factual basis" in a criminal setting to be completely analogous to public employee discipline, but it is not wholly distinguished either. To say that a short, cursory statement which only makes a vague reference to a policy violation is a sufficient factual basis would be similar to saying that a prosecutor's statement that a defendant violated a section of the criminal code would be a sufficient factual basis for a voluntary plea agreement.

HSE appears to misinterpret the intent of the APRA in favor of "legitimate privacy interests of employees" of which they have cited no basis or authority. Public school employees, including teachers, coaches, administrators, superintendents and school board members work for and on behalf of the public at large. They are servants of the people. Therefore it stands to reason the taxpayers who pay their salaries have



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the right to know, to a certain extent, when a public employee has misbehaved and how. For that assignment, HSE has received a grade of 'incomplete.'

FERPA

Under FERPA, the U.S. Department of Education may withhold funding to public and private schools for the unauthorized release of education records. "Education records" are broadly defined as:

"those records, files, documents, and other materials, which (i) contain information directly related to a student; and (ii) are maintained by an educational agency or institution or by a person acting for such agency or institution." 20 U.S.C. §1232g(a)(4)(A).

The withdrawal of funding is the only recognized remedy available at law for failing to comply with FERPA. There is no private cause of action for the release of student records. *Gonzaga Univ. v. Doe*, 536 U.S. 273 (2002). I cannot foresee that releasing additional details regarding the factual basis for the teacher's suspension, with no mention of the student(s) involved, would result in HSE schools losing their funding from the Department of Education. Simply put, I cannot fathom a scenario where HSE would be at any reasonable risk of liability were a legitimate factual basis provided.

HSE argues that the Complainant's request is a "targeted request" under 34 C.F.R. § 99.3, which provides that "[i]nformation requested by a person who the educational agency or institution reasonably believes knows the identity of the student to whom the education record relates" constitutes personally identifiable information of students, and that HSE reasonably believes the Complainant (and the HSE community) knows the identity of a student involved. However, I cannot agree that this is a targeted request by the Complainant. The Complainant has been clear that he has no interest in the identity of the student(s) who may be involved in this disciplinary action. Complainant has not requested any information directly related to a student.

Ind. Code § 5-14-3-6(a) provides that "[i]f a public record contains disclosable and nondisclosable information, the public agency shall, upon receipt of request under this chapter, separate the material that may be disclosed and make it available for inspection and copying." HSE has not provided sufficient information to give the Complainant a reasonable idea of why the teacher was suspended. The Complainant mentions that he has repeatedly asked for the date of the incident, a fact that does not implicate any student's identity, but HSE will not provide this date. I am inclined to agree with the Complainant that HSE is conveniently using FERPA to avoid releasing any facts at all surrounding the employee suspension to protect an unrecognized and overprotective notion of public employee privacy. I will also note that I have discussed this matter with the Indiana Department of Education. While it



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recognizes the importance of student privacy (as does this Office), it does not consider the release of a factual basis for employee discipline to be a compromise of student privacy if the student is not identified.

To be clear, I have discussed this matter at length with HSE and their argument is not ill-intentioned or in bad faith. However, as the State of Indiana's authority on matters of public access, I gave the school an opportunity to correct what I determined to be a deficiency. Therefore I consider the non-compliance of my recommendation in *Opinion of the Public Access Counselor 17-FC-09* to be a violation of the spirit and intent of Ind. Code § 5-14-3-4(b)(8)(C).

Regards,

Luke H. Britt

A handwritten signature in black ink, appearing to read "LH Britt".

Public Access Counselor

Cc: Mr. Seamus Boyce, Esq.

29D03-1806-MI-005244
Hamilton Superior Court 3

Filed: 6/8/2018 11:00 AM
Tammy Baltz
Clerk
Hamilton County, Indiana

EXHIBIT K

church church hittle + antrim
ATTORNEYS AT LAW

June 21, 2017

VIA EMAIL

Mike Wilkins
Broyles, Kight & Ricafort, P.C.
8250 Haverstick Road, Suite 100
MWilkins@bkr.law.com

Re: I.C. § 5-14-3-4(b)(8)(C) Request

Dear Mr. Wilkins:

I write on behalf of Hamilton Southeastern Schools (HSE or the "School"). We received a request on behalf of your client, WTHR through Mr. Segall, via email dated June 14, 2017, requesting additional detail pursuant to I.C. § 5-14-3-4(b)(8)(C). It is most appropriate to communicate directly with you given your client's threat of litigation.


Your client's most recent request rests on an incorrect interpretation of the Public Access Counselor's advisory opinion 17-FC-81. Following the release of advisory opinion 17-FC-81, we confirmed with the Public Access Counselor that he found **no** violation of the Indiana Access to Public Records Act, specifically I.C. § 5-14-3-4(b)(8)(C). We ask that you clarify this with your client when communicating about violations of Indiana Code.

Given the Public Access Counselor has found no violation of Indiana Code, HSE has no obligation to supplement the information already provided pursuant to I.C. § 5-14-3-4(b)(8)(C). To the extent you are consulting with your client regarding the threatened litigation, please also note I.C. § 5-14-3-9(e) states a "person who has been denied *the right to inspect or copy a public record* may...file an action to...compel the public agency to permit the person to inspect and copy the public record." (emphasis added.) It does not appear that your client is seeking the ability to inspect or copy a public record.

Please direct any further communications or inquiries of HSE to me.

Sincerely,

Church Church Hittle + Antrim


Séamus P. Boyce

Cc: Luke Britt, Public Access Counselor

cch+a

Two North Ninth Street, Noblesville, IN 46060 P 317.773.2190 F 317.773.5320

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29D03-1806-MI-005244
Hamilton Superior Court 3

Filed: 6/8/2018 11:00 AM
Tammy Baltz
Clerk
Hamilton County, Indiana

EXHIBIT L



1000 North Meridian St.
Indianapolis, IN 46204

317.636.1313

Dr. Allen Bourff
Hamilton Southeastern Schools
13485 Cumberland Road
Fishers, IN 46038
abourff@hse.k12.in.us

VIA EMAIL AND FEDEX OVERNIGHT MAIL

October 30, 2017

Dear Dr. Bourff:

This is a request under the Indiana Access to Public Records Act ("APRA"). Pursuant to the APRA, I and WTHR request access to and copies of the portions of Rick Wimmer's personnel file that contain the following information:

- A) his name, compensation, job title, business address, business telephone number, job description, education and training background, previous work experience, or dates of first and last employment;
- B) information relating to the status of any formal charges against him; and
- C) the factual basis for any disciplinary action in which final action has been taken and that resulted in his being suspended, demoted, or discharged.

As you are aware, this information is required to be disclosed pursuant to I.C. § 5-14-3-4(b)(8)(A)-(C).

This request does not ask for – nor is WTHR interested in – the name of any student.

Please do not hesitate to contact me at 317-408-3397 or bsegall@wthr.com if you have any questions about this request or wish to discuss it in more detail.

Thank you in advance for your assistance.

Regards,

Bob Segall
Senior Investigative Reporter
WTHR-TV
1000 N. Meridian St.
Indianapolis, IN 46204

Group 5 Station
An Equal Opportunity Employer

29D03-1806-MI-005244
Hamilton Superior Court 3

Filed: 6/8/2018 11:00 AM
Tammy Baltz
Clerk
Hamilton County, Indiana

EXHIBIT M

From: Abbotts, Emily [mailto:epaceabbotts@hse.k12.in.us]
Sent: Thursday, December 7, 2017 4:56 PM
To: Bob Segall <Bob.Segall@wthr.com>
Subject: APRA Request

Dear Mr. Segall:

Hamilton Southeastern Schools provides the following in response to your October 30, 2017 request.

In response to your request "A:"

Name: Rick O. Wimmer

Compensation: \$85,005.39

Job Title: Teacher, Head Football Coach at Fishers High School

Business Address: 13000 Promise Road, Fishers, IN 46038

Business Telephone: (317) 915-4290

Job Description(s):

Teacher

PERFORMANCE RESPONSIBILITIES:

1. Meet and instruct assigned classes in the locations and at times designated.
2. Develop and maintain a classroom environment conducive to effective learning within the limits of the available resources.
3. Encourage students to set and maintain standards of classroom behavior.
4. Employ a variety of instructional techniques and instructional media consistent with the available resources.
5. Take reasonable precautions to protect students, equipment, materials and facilities.
6. Evaluate student progress.
7. Assist in upholding and enforcing school rules, administrative regulations and Board policy.
8. Assist in selection of books, equipment and other instructional materials.
9. Work to establish and maintain open lines of communication with students and their parents concerning student academic and behavioral progress.
10. Perform all other reasonable assigned duties.

PERSONAL AND PROFESSIONAL RESPONSIBILITIES:

11. Nurture a positive relationship with super-ordinates, subordinates and peers.
12. Demonstrate respect for super-ordinates, subordinates and peers.
13. Support corporation decisions and direction relative to matters of policy and administrative directives.
Work as a team player.
14. Demonstrate ability to deal with sensitive issues in a tactful and professional manner.
15. Address concerns and offer suggestions in an appropriate and confidential manner.

High School Head Coach

PERFORMANCE RESPONSIBILITIES:

1. The head coach has full responsibility for supervision of the program, including freshmen, JV, and varsity teams.
2. The head coach is in charge of assignments and duties of all assistant coaches.
3. The head coach is responsible to schedule practice periods with the Athletic Director, keep within that scheduled time, and communicate any time changes.

4. The head coach is to assist the Athletic Director in maintaining and caring for the athletic facilities and to aid in preparation of the facilities for contests when necessary.
5. The head coach is to conduct a pre-season meeting with all athletes and parents, and outline training rules and expectations regarding the athlete's attitude, conduct and appearance as an athlete and as a student.
6. The head coach is responsible for team selection and team discipline.
7. The head coach is responsible for planning practices and game strategy.
8. The head coach is responsible for assisting the Athletic Director in the purchase of equipment from responsible companies and following school purchasing procedure.
9. All coaches are to be conscientiously aware that being an excellent classroom teacher should be the standard.
10. All coaches are to conduct practice and games with the highest level of sportsmanship and ethics.
11. The head coach is responsible for the general upkeep and protection of equipment under their jurisdiction.
12. The head coach reports in season to the Athletic Director regarding program developments.
13. The head coach is directly responsible for a complete inventory of equipment, season summary, and self-evaluation to be made at the end of each season.
14. The head coach is responsible for maintaining accurate financial records of the program's account.
15. All coaches are responsible for riding the team bus to and from athletic events
16. The head coach has the responsibility for striving to build good sportsmanship and developing good public relations in the school and community.
17. The major responsibilities of head coaches are listed below as a guide for carrying out assigned duties. Additional responsibilities may be inherent in individual programs for varsity coaches; these will be delegated by the Athletic Director.

PERSONAL AND PROFESSIONAL RESPONSIBILITIES:

1. Nurture a positive relationship with super-ordinates, subordinates and peers.
2. Demonstrate respect for super-ordinates, subordinates and peers.
3. Support corporation decisions and direction relative to matters of policy and administrative directives. Work as a team player.
4. Demonstrate ability to deal with sensitive issues in a tactful and professional manner.
5. Address concerns and offer suggestions in an appropriate and confidential manner.

Education and Training Background:

- **High School:** Huntington North High School, 1974
- **B.S. Degree:** University of Indianapolis, 1978
 - Major: Health and Physical Education Area
 - Minor: English
- **M.A. Degree:** Ball State University, 1982
 - Major: Physical Education
 - Minor: English

Previous Work Experience:

- Fishers High School 2006-Present
- Greenwood High School 1997-2006
- Merrillville High School 1988-1997
- Zionsville High School 1983-1988
- Rushville High School, 1978-1983

Dates of First and Last Employment:

- Hired January 23, 2016 - current

In response to your request "B:" There are no formal charges against Mr. Wimmer, thus no information exists relating to the status of any formal charges against him.

In response to your request "C:"

Mr. Wimmer was suspended for one day without pay on December 15, 2015 for violation of job description responsibilities to deal with sensitive issues in a tactful and professional manner, and perform all other reasonable assigned duties.

Mr. Wimmer was suspended for five days without pay on December 14, 2016 due to not implementing instructions for classroom management strategies consistent with Board of School Trustees Policy G02.06.

Please direct further inquiries to me.

Sincerely,

Emily Pace Abbotts

Emily Pace Abbotts

Director of School and Community Relations

Hamilton Southeastern Schools

p 317.570.3320 c 906.250.3011

epaceabbotts@hse.k12.in.us

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29D03-1806-MI-005244

Hamilton Superior Court 3

**Filed: 6/8/2018 11:00 AM
Tammy Baltz
Clerk
Hamilton County, Indiana**

EXHIBIT N

From: Bob Segall
Sent: Friday, December 8, 2017 10:27 AM
To: Abbotts, Emily <epaceabbotts@hse.k12.in.us>
Subject: RE: APRA Request

Ms. Abbotts,

Thank you for your email. The October 30, 2017 APRA request submitted by WTHR and myself seeks "access to and copies of the portions of Rick Wimmer's personnel file" that contain certain categories of information. While your email appears to contain information about Mr. Wimmer, it does not include or attach any records or portions thereof from his personnel file per the request. Please let me know when I can come inspect these records. If you'd prefer to send them to me, my email and mailing address are included below.

Regards,

Bob Segall

WTHR Senior Investigative Reporter
1000 N. Meridian Indianapolis, IN 46204
317.655.5768 Direct | 317.408.3397 Cell | bsegall@wthr.com



From: Abbotts, Emily [<mailto:epaceabbotts@hse.k12.in.us>]
Sent: Thursday, December 7, 2017 4:56 PM
To: Bob Segall <Bob.Segall@wthr.com>
Subject: APRA Request

Dear Mr. Segall:

Hamilton Southeastern Schools provides the following in response to your October 30, 2017 request.

In response to your request "A:"

Name: Rick O. Wimmer

Compensation: \$85,005.39

Job Title: Teacher, Head Football Coach at Fishers High School

Business Address: 13000 Promise Road, Fishers, IN 46038

Business Telephone: (317) 915-4290

Job Description(s):

Teacher

PERFORMANCE RESPONSIBILITIES:

1. Meet and instruct assigned classes in the locations and at times designated.
2. Develop and maintain a classroom environment conducive to effective learning within the limits of the available resources.
3. Encourage students to set and maintain standards of classroom behavior.
4. Employ a variety of instructional techniques and instructional media consistent with the available resources.
5. Take reasonable precautions to protect students, equipment, materials and facilities.
6. Evaluate student progress.
7. Assist in upholding and enforcing school rules, administrative regulations and Board policy.

8. Assist in selection of books, equipment and other instructional materials.
9. Work to establish and maintain open lines of communication with students and their parents concerning student academic and behavioral progress.
10. Perform all other reasonable assigned duties.

PERSONAL AND PROFESSIONAL RESPONSIBILITIES:

11. Nurture a positive relationship with super-ordinates, subordinates and peers.
12. Demonstrate respect for super-ordinates, subordinates and peers.
13. Support corporation decisions and direction relative to matters of policy and administrative directives.
Work as a team player.
14. Demonstrate ability to deal with sensitive issues in a tactful and professional manner.
15. Address concerns and offer suggestions in an appropriate and confidential manner.

High School Head Coach

PERFORMANCE RESPONSIBILITIES:

1. The head coach has full responsibility for supervision of the program, including freshmen, JV, and varsity teams.
2. The head coach is in charge of assignments and duties of all assistant coaches.
3. The head coach is responsible to schedule practice periods with the Athletic Director, keep within that scheduled time, and communicate any time changes.
4. The head coach is to assist the Athletic Director in maintaining and caring for the athletic facilities and to aid in preparation of the facilities for contests when necessary.
5. The head coach is to conduct a pre-season meeting with all athletes and parents, and outline training rules and expectations regarding the athlete's attitude, conduct and appearance as an athlete and as a student.
6. The head coach is responsible for team selection and team discipline.
7. The head coach is responsible for planning practices and game strategy.
8. The head coach is responsible for assisting the Athletic Director in the purchase of equipment from responsible companies and following school purchasing procedure.
9. All coaches are to be conscientiously aware that being an excellent classroom teacher should be the standard.
10. All coaches are to conduct practice and games with the highest level of sportsmanship and ethics.
11. The head coach is responsible for the general upkeep and protection of equipment under their jurisdiction.
12. The head coach reports in season to the Athletic Director regarding program developments.
13. The head coach is directly responsible for a complete inventory of equipment, season summary, and self-evaluation to be made at the end of each season.
14. The head coach is responsible for maintaining accurate financial records of the program's account.
15. All coaches are responsible for riding the team bus to and from athletic events
16. The head coach has the responsibility for striving to build good sportsmanship and developing good public relations in the school and community.
17. The major responsibilities of head coaches are listed below as a guide for carrying out assigned duties. Additional responsibilities may be inherent in individual programs for varsity coaches; these will be delegated by the Athletic Director.

PERSONAL AND PROFESSIONAL RESPONSIBILITIES:

1. Nurture a positive relationship with super-ordinates, subordinates and peers.
2. Demonstrate respect for super-ordinates, subordinates and peers.
3. Support corporation decisions and direction relative to matters of policy and administrative directives.
Work as a team player.
4. Demonstrate ability to deal with sensitive issues in a tactful and professional manner.
5. Address concerns and offer suggestions in an appropriate and confidential manner.

Education and Training Background:

- **High School:** Huntington North High School, 1974
- **B.S. Degree:** University of Indianapolis, 1978
 - Major: Health and Physical Education Area
 - Minor: English
- **M.A. Degree:** Ball State University, 1982
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 - Minor: English

Previous Work Experience:

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- Greenwood High School 1997-2006
- Merrillville High School 1988-1997
- Zionsville High School 1983-1988
- Rushville High School, 1978-1983

Dates of First and Last Employment:

- Hired January 23, 2016 - current

In response to your request "B:" There are no formal charges against Mr. Wimmer, thus no information exists relating to the status of any formal charges against him.

In response to your request "C:"

Mr. Wimmer was suspended for one day without pay on December 15, 2015 for violation of job description responsibilities to deal with sensitive issues in a tactful and professional manner, and perform all other reasonable assigned duties.

Mr. Wimmer was suspended for five days without pay on December 14, 2016 due to not implementing instructions for classroom management strategies consistent with Board of School Trustees Policy G02.06.

Please direct further inquiries to me.

Sincerely,

Emily Pace Abbotts

Emily Pace Abbotts

Director of School and Community Relations

Hamilton Southeastern Schools
 p 317.570.3320 c 906.250.3011
epaceabbotts@hse.k12.in.us

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29D03-1806-MI-005244
Hamilton Superior Court 3

Filed: 6/8/2018 11:00 AM
Tammy Baltz
Clerk
Hamilton County, Indiana

EXHIBIT O

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SAUNDRA TORRY
USA TODAY

JUDY WOODRUFF
PBS/The NewsHour

Senior Advisor:
PAUL STEIGER
ProPublica

*Affiliations appear only
for purposes of identification.*

December 22, 2017

Dear Mr. Britt,

We represent WTHR and its reporter, Bob Segall, (collectively, "WTHR"). Please consider this letter a formal complaint on behalf of WTHR. This complaint alleges that the Hamilton Southeastern School District ("HSE") has violated the Access to Public Records Act ("APRA" or the "Act"), Ind. Code §§ 5-14-3-1 *et seq.*, by denying access to public records and/or data as required by the Act.

I. Relevant Background and Procedural History

On October 30, 2017, WTHR submitted an APRA request to HSE (the "Request"), through counsel and via e-mail and FedEx overnight mail. A true and correct copy of the Request (without the cover sheet) is attached hereto as Exhibit A. The Request asked for:

access to and copies of the portions of Rick Wimmer's personnel file that contain the following information:

- A) his name, compensation, job title, business address, business telephone number, job description, education and training background, previous work experience, or dates of first and last employment;
- B) information relating to the status of any formal charges against him; and
- C) the factual basis for any disciplinary action in which final action has been taken and that resulted in his being suspended, demoted, or discharged.

Ex. A. A FedEx proof-of-delivery for the Request, showing it was delivered on October 31, 2017, is attached hereto as Exhibit B.

On December 7, 2017, Mr. Segall received an e-mail from Emily Abbotts, the Director of School and Community Relations at HSE (the "Response"). A true and correct copy of HSE's Response is attached hereto as Exhibit C. The Response includes information about Mr. Wimmer, but did not include or attach any documents. *See* Ex. C.

On December 8, 2017, Mr. Segall responded to Ms. Abbotts via e-mail (the "Reply"). A true and correct copy of Mr. Segall's Reply is attached hereto as Exhibit D. In the Reply, Mr. Segall stated:

The October 30, 2017 APRA request submitted by WTHR and myself seeks "access to and copies of the portions of Rick Wimmer's personnel file" that contain certain categories of

information. While your email appears to contain information about Mr. Wimmer, it does not include or attach any records or portions thereof from his personnel file per the request. Please let me know when I can come inspect these records. If you'd prefer to send them to me my email and mailing address are included below.

Ex. D. There has been no subsequent communication from Ms. Abbotts or anyone at HSE regarding the Request or the Reply.

II. Argument

The APRA represents Indiana's commitment to a fully informed democratic society. As APRA's preamble states:

A fundamental philosophy of the American constitutional form of representative government is that government is the servant of the people and not their master. Accordingly, it is the public policy of the state that all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees.

Ind. Code § 5-14-3-1. *See also Evansville Courier & Press v. Vanderburgh Cty. Health Dep't*, 17 N.E.3d 922, 928 (Ind. 2014) (stating that the "APRA is intended to ensure Hoosiers have broad access to most government records").

Here, HSE violated the APRA by either (1) failing to provide access to public records requested by WTHR without citing any exemption authorizing them to withhold such records, or (2) failing to provide sufficient "data" from records to form a "factual basis" for Mr. Wimmer's suspension on or about December 14, 2016.

A. HSE violated the APRA by failing to provide access to public records requested by WTHR.

Under the Act, "[a]ny person may inspect and copy the public records of any public agency[]" that are not exempted. Ind. Code § 5-13-3-3(a). Agencies must, within a "reasonable time" after receiving a request, either provide copies to the requester or allow the requester to make copies. *Id.* § 5-13-3-3(b).

Here, there is no question that HSE is a public entity subject to the APRA. *See* Ind. Code § 5-14-3-2; Advisory Opinion 17-FC-81 ("The Hamilton Southeastern School District is a public agency for the purposes of the APRA."). There is also no question that WTHR submitted a proper APRA request to HSE, asking for access to and copies of specific portions of a public employee's personnel file that are required by law to be disclosed. *See* Ex. A; Ind. Code § 5-14-3-4(b)(8) (exempting personnel files from mandatory disclosure except for the three categories of information sought by the Request). HSE's Response, however, did not provide WTHR with access to the requested records, nor did it provide copies of them; it

merely sent an e-mail containing some information about Mr. Wimmer. *See* Ex. C. HSE's Response did not cite any exemption in the APRA that would authorize it to deny access to the records sought by the Request. *See* Ex. C. Accordingly, HSE is in violation of the Act. Ind. Code § 5-13-3-3(b).

B. Alternatively, HSE violated the APRA by failing to provide the "factual basis" for Mr. Wimmer's December 14, 2016 suspension.

Under the APRA, agencies that "maintain[] or contract[] for the maintenance of public records in an electronic data storage system shall make reasonable efforts to provide to a person making a request a copy of all disclosable data contained in the records" *Id.* § 5-14-3-3(d). Although HSE's Reply does not provide any information about the records sought by the Request, it is possible that it electronically maintains them and thus its Response is intended to provide access to the "data" therein. *See id.* If that is the case, HSE's Response violates the APRA because it fails to provide access to "all disclosable data" responsive to part C of the Request. *See id.* WTHR specifically alleges that HSE has failed to provide access to sufficient "data" to form a "factual basis" for disciplinary action taken with respect to Mr. Wimmer on or about December 14, 2016.

While public agencies have discretion to withhold certain portions of personnel files under Section 5-14-3-4-(b)(8) of the Act, that exemption does not allow them to withhold:

- (A) the name, compensation, job title, business address, business telephone number, job description, education and training background, previous work experience, or dates of first and last employment of present or former officers or employees of the agency;
- (B) information relating to the status of any formal charges against the employee; and
- (C) the factual basis for a disciplinary action in which final action has been taken and that resulted in the employee being suspended, demoted, or discharged.

Ind. Code § 5-14-3-4(b)(8).

Though there are no judicial decisions addressing the exceptions to Section 5-14-3-4(b)(8) of the APRA, the Public Access Counselor ("PAC") has issued advisory opinions interpreting its scope. In Advisory Opinion 16-FC-2016, for example, the PAC explained that a "factual basis" "should include *actual facts of the misdeeds* supporting a policy violation." 16-FC-2016, *available at* <http://www.in.gov/pac/advisory/files/16-FC-164.pdf> (emphasis added). More recently, in response to a prior complaint by WTHR concerning this incident, the PAC analogized the "factual basis" referenced in Section 5-14-3-4(b)(8) to Section 35-35-1-3 of the Indiana Code, which refers to a "factual basis" in the context of voluntary plea agreements for criminal convictions. Advisory Opinion 16-FC-81, *available at* <http://www.in.gov/pac/advisory/files/17-FC-81.pdf>. The Indiana Supreme Court has interpreted a "factual basis" in that setting as existing "when there is evidence about the

elements of the crime from which a court could reasonably conclude that the defendant is guilty.” *Butler v. State*, 658 N.E.2d 72, 77 (Ind. 1995).

Here, there is no dispute that Mr. Wimmer was suspended for five days by HSE on or about December 14, 2016. *See* Ex. C; Bob Segall, *Fishers HS football coach quietly gets unpaid, five-day suspension*, WTHR (updated Jan 11, 2017), <https://www.wthr.com/article/fishers-hs-football-coach-quietly-gets-unpaid-five-day-suspension>; Bob Segall, *State says secret suspension for Fishers HS football coach violates Indiana law*, WTHR (updated Jun. 13, 2017), <https://www.wthr.com/article/state-says-secret-suspension-for-fishers-hs-football-coach-violates-indiana-law>. However, the entirety of the “factual basis” for that suspension provided in HSE’s Response is as follows:

Mr. Wimmer was suspended for five days without pay on December 14, 2016 due to not implementing instructions for classroom management strategies consistent with Board of School Trustees Policy G02.06.

Ex. C. The information provided by HSE regarding Mr. Wimmer’s suspension is patently insufficient. Apart from Mr. Wimmer’s name, it does not provide any of the most basic facts that would allow the public to understand what precipitated his suspension. It does not provide any “evidence” that would allow anyone to “reasonably conclude” that Mr. Wimmer violated a policy. *See Butler*, 658 N.E.2d at 77. For example, the “data” provided by HSE does not include the date that the incident that precipitated Mr. Wimmer’s suspension took place, one of the most basic “facts” about that event. Nor does it explain what “instructions” Mr. Wimmer was given, or how he did “not implement[.]” them. *See* Ex. C. As WTHR has previously argued, it does not begin to approach the elementary “Who, What, When, Where, Why and How” standard used throughout journalism and which would allow the public to understand what happened that led to Mr. Wimmer’s suspension. Because HSE’s Response does not include any “facts of the misdeeds supporting a policy violation[.]” 16-FC-2016, it violated its obligations under the APRA.

The reference in HSE’s Response to Policy G02.06 does not cure its factual deficiencies. A true and correct copy of HSE’s Policy G02.06 obtained from <https://boarddocs.com/in/hses/Board.nsf/Public#> is attached hereto as Exhibit E (hereinafter, the “Policy”). No reasonable person reading HSE’s Response alongside the Policy could understand the “factual basis” for Mr. Wimmer’s suspension. Indeed, when the PAC issued an advisory opinion in response to a previous complaint by WTHR on a prior response by HSE, it recognized that

To say that a short, cursory statement which only makes a vague reference to a policy violation is a sufficient factual basis would be similar to saying that a prosecutor’s statement that a defendant violated a section of the criminal code would be a sufficient factual basis for a voluntary plea agreement.

Advisory Opinion 16-FC-81. The Policy discusses a wide array of topics, such as what it “expects” of its staff, what staff “should recognize”, the fact that HSE’s Board has approved a “Memorandum of Understanding” with local law enforcement for sharing information concerning HSE employees who are involved in alleged criminal acts, and a requirement for

HSE employees subject to the policy to report criminal arrests or filing of criminal charges related to specified topics. It does not, however, mention “classroom management strategies” or “instructions” given to employees in connection therewith. Because the public is unable to ascertain from HSE’s Response the “facts of the misdeeds” by Mr. Wimmer that violated the Policy, *see* 16-FC-2016, HSE’s Response violates the APRA.

III. Conclusion

As the PAC has powerfully explained, “[w]hen employees are hired by a public entity to carry out civic duties paid for by taxpayer monies, a degree of transparency is required when that employee is disciplined for being a poor steward of their responsibilities.” 16-FC-2016. The history of this Request clearly demonstrates that WTHR and Mr. Segall have been diligently seeking information on behalf of the public regarding the suspension of a public employee for almost a year. The public both deserves and has a right to know the factual basis for Mr. Wimmer’s December 14, 2016 suspension.

For the reasons stated herein, WTHR asks that you find HSE in violation of its obligations under the APRA.

Sincerely,

/s/ Katie Townsend
Katie Townsend
Adam A. Marshall
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29D03-1806-MI-005244

Hamilton Superior Court 3

Filed: 6/8/2018 11:00 AM
Tammy Baltz
Clerk
Hamilton County, Indiana

EXHIBIT P

OPINION OF THE PUBLIC ACCESS COUNSELOR

BOB SEGALL,
Complainant,

v.

HAMILTON SOUTHEASTERN SCHOOL DISTRICT,
Respondent.

Formal Complaint No.
17-FC-275

Luke H. Britt
Public Access Counselor

BRITT, opinion of the Counselor:

This advisory opinion is in response to a formal complaint alleging the Hamilton Southeastern School District ("HSE") violated the Access to Public Records Act¹ ("APRA"). HSE responded to the complaint through attorney Liberty Roberts. 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 December 22, 2017.

¹ Ind. Code §§ 5-14-3-1 to -10

BACKGROUND

Bob Segall ("Complainant"), through the Reporters Committee for Freedom of the Press, filed a formal complaint alleging the Hamilton Southeastern School District violated the Access to Public Records Act by failing to produce public records sought under Ind. Code § 5-14-3-4(b)(8).²

On or about October 30, 2017, the Complainant sought information from HSE as to a named employee's personnel file. Specifically, he requested the name, compensation, job title, business address, business telephone number, job description, education and training background, previous work experience, or dates of first and last employment. All of these items must be disclosed pursuant to Ind. Code § 5-14-3-4(b)(8)(A) even though they are part of an employee's personnel file, which is generally released or withheld at the discretion of the employing public agency.

HSE responded with the information in the form of a summary compilation taken from other public record sources. The Complainant takes exception, arguing that the public records themselves must be released instead of an amalgamation extrapolated from original records.

For its part, HSE argues Ind. Code § 5-14-3-4(b)(8) merely requires the information listed in the statute to be disclosed and makes no mention of disclosing the actual public documents in a personnel file. If the records themselves would

² This Opinion will only address information sought pursuant to Ind. Code § 5-14-3-4(b)(8)(A). The "factual basis" issue has been taken up by this Office on two prior occasions and will not be opined upon further here.

require disclosure, then the documents would require excessive redaction. For example, it argues that because "name" is a required piece of information to be disclosed, then every document with the employee's name in his or her personnel file would ostensibly need to be released with the remainder of the document potentially redacted.

ANALYSIS

This formal complaint presents an issue of whether a summary document with information provided in Ind. Code § 5-14-3-4(b)(8) is sufficient to meet disclosure requirements or if the actual record would require disclosure with sensitive information redacted.

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 Hamilton Southeastern School Corporation is a public agency for the purposes of the APRA, and subject to its requirements. Ind. Code § 5-14-3-2(n). Therefore, 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. Ind. Code § 5-14-3-3(a).

While personnel files of public employees are generally allowed to be kept in-house by an agency, Ind. Code § 5-14-3-

4(b)(8) requires the disclosure of the following information from an employee's personnel file:

(A) the name, compensation, job title, business address, business telephone number, job description, education and training background, previous work experience, or dates of first and last employment of present or former officers or employees of the agency;

(B) information relating to the status of any formal charges against the employee; and

(C) the factual basis for a disciplinary action in which final action has been taken and that resulted in the employee being suspended, demoted, or discharged.

Typically, the Access to Public Records Act does not require the creation of records to satisfy a request, but this Office has held that there are limited circumstances when this is not only convenient, but necessary. This subsection of the Access to Public Records Act does not mention the words "records," "documents" or "work product" as similar subsections do. A reasonable inference can be made that the General Assembly did not intend to require the information listed in Ind. Code § 5-14-3-4(b)(8) to be the records themselves, but rather pulled from other sources and combined to create a new record with the requisite facts.

Make no mistake, the information listed in Ind. Code § 5-14-3-4(b)(8) is required to be maintained in some shape or form by the agency in a personnel file, but it can be disseminated in aggregate form as a new record. The abstract becomes an

entirely new public record but is satisfactory for the purposes of the Access to Public Records Act so long as the underlying information is accurate as to the original.

CONCLUSION

Based on the foregoing, it is the opinion of the Public Access Counselor that the Hamilton Southeastern School Corporation did not violate the Access to Public Records Act by extracting the information listed in Ind. Code § 5-14-3-4(b)(8)(A) from original personnel files and presenting them in summary form.



Luke H. Britt
Public Access Counselor