



# STATE OF INDIANA

MICHAEL R. PENCE, Governor

PUBLIC ACCESS COUNSELOR  
LUKE H. BRITT

Indiana Government Center South  
402 West Washington Street, Room W470  
Indianapolis, Indiana 46204-2745  
Telephone: (317)233-9435  
Fax: (317)233-3091  
1-800-228-6013  
[www.IN.gov/pac](http://www.IN.gov/pac)

February 9, 2015

Mr. Robin L. Henderson  
614 E. Main St.  
Madison, IN 47250

*Re: Formal Complaint 15-FC-24; Alleged Violation of the Access to Public Records Act by the Madison Consolidated Schools (Amended)*<sup>1</sup>

Dear Mr. Henderson,

This advisory opinion is in response to your formal complaint alleging Madison Consolidated Schools ("MCS"), violated the Access to Public Records Act ("APRA") Ind. Code § 5-14-3-1 *et. seq.* MCS has responded to your complaint via Dr. Ginger Studebaker-Bolinger. Her response is enclosed for your review. I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on January 23, 2015.

## BACKGROUND

Your complaint dated January 16, 2015, alleges Madison Consolidated Schools violated the Access to Public Records Act by failing to produce information you requested.

On or about December 26, 2014, you requested the following public records from MCS:

All written correspondence, including but not limited to e-mails, letters, memos, notes, phone records, invoices, and letters of engagement between any employee of Madison Consolidated Schools, the Madison Consolidated School Board and its members, the present Madison Consolidated School's attorney, the law firm Ziemer Stayman Weitzel Shoulders and/or its members relative to any matters concerning the

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<sup>1</sup> The original opinion published on February 9, 2015 indicated MCS did not furnish a response to the formal complaint. Due to an internal PAC office error, it was discovered that a response was provided by the close of business on February 9. As noted in the amended opinion, the substantive response of MCS did not alter the Discussion or Conclusion portions of the opinion.

websites [www.oldmadison](http://www.oldmadison), its Facebook page, and Mr. Jeffrey Burleson of Madison, IN.

You further appended your request by seeking access to:

The following minutes, memos, e-mails, contracts, phone records, and any other written material and/or video recordings which occurred during any minutes of the Madison Consolidated Schools Board and/or between said board or any board member and any employee of Madison Consolidated Schools and or any attorney relative to the purported situations and postings as claimed in the referenced letter.

As well as:

Records that show compliance to IN Code 5-14-4.5-5 (published notice of school board meetings 48 hours prior to said meetings) for any meeting where the above referenced situations and/or hiring of an attorney was discussed or authorized.

MCS sent you a boilerplate response letter claiming your request was denied based upon Ind. Code § 5-14-3-4(b)(2), which allows the withholding of attorney work product. MCS has not responded to your formal complaint. MCS resurrected that argument in its response to your formal complaint.

## **DISCUSSION**

The public policy of the APRA states that “(p)roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information.” See Ind. Code § 5-14-3-1. The Madison Consolidated Schools is a public agency for the purposes of the APRA. See Ind. Code § 5-14-3-2(n)(1). Accordingly, any person has the right to inspect and copy MCS’ public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. See Ind. Code § 5-14- 3-3(a).

The APRA requires an agency to separate and/or redact confidential information in public records before making the disclosable information available for inspection and copying. See Ind. Code § 5-14-3-6(a). Some of the records you seek may be work product of an attorney exempt from disclosure under Ind. Code § 5-14-3-4(b)(2). But it is highly unlikely that the totality of the documentation is work product. MCS would need to identify the non-disclosable records containing work product and produce the information that does not contain work product.

Furthermore, while it appears as if your request is not reasonably particular, in that it does not meet the specificity requirements of Ind. Code § 5-14-3-3, the MCS does not claim it is too vague. In regard to email communication, please refer to the *Opinion of the*

*Public Access Counselor 14-INF-30* for an overview of reasonable particularity in regard to emails. Nevertheless, MCS did not claim the exception and chose instead to outright deny your request.

### **CONCLUSION**

Based on the foregoing, it is the Opinion of the Public Access Counselor Madison Consolidated Schools acted contrary to the Access to Public Records Act.

Regards,

A handwritten signature in black ink, appearing to read 'L. H. Britt', with a large, sweeping flourish underneath.

Luke H. Britt  
Public Access Counselor

Cc: Dr. Ginger Studebaker-Bolinger