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Government Services & Litigation Alert - Court Requires More Specificity For Public Records Requests Seeking E-Mail

January 30, 2013 | Atlanta | Chicago | Columbus | Delaware | Elkhart | Fort Wayne | Grand Rapids | Indianapolis | Los Angeles | Minneapolis | South Bend

In an important case limiting how persons may probe e-mails maintained by political subdivisions, the Indiana Court of Appeals has ruled that state law requires those seeking access to public e-mail must provide the details of what type of e-mail they are seeking. This holding could alleviate some of the burdens on cities, towns and counties who must produce public records, as it prevents what the Court described as "fishing expeditions" into public employees' e-mails without any meaningful restrictions on time or subject matter.

In *Anderson v. Huntington County Commissioners*, the Court of Appeals determined that a person seeking public records under the Access to Public Records Act (APRA) must meet the statute's requirement that a request be "reasonably particular" as to what it seeks. If a request does not satisfy this standard, the Court held that a political subdivision may deny the request outright.

Critically, the Court determined that a request for e-mail is not "reasonably particular" if it simply seeks all e-mail sent by or to a particular government employee, even if the request is limited to particular dates. When a request for e-mail is this broad, the political subdivision is within its right to simply deny it. By way of illustration, however, the Court suggested that a request might satisfy the "reasonably particular" requirement if it was limited to e-mails between two specific people over a limited period of time.

The decision could prove to be beneficial to cities, towns and counties that must bear the burden of carrying out the commands of the APRA. The Anderson case itself proves a cautionary tale, as the county's attempt to comply with the request involved hours of lost time by the county IT department, the purchase of new software to retrieve more than 9,500 emails, and even more lost productivity by those county employees who were required to review the e-mails and redact sensitive information, such as social security numbers.

In a second important holding in the Anderson case, the Court rejected an attempt by the plaintiff to force the county to pay the plaintiff's attorneys' fees. The APRA requires a political subdivision to pay attorneys' fees to a plaintiff who "substantially prevails" when bringing a lawsuit to compel the political subdivision to produce public records. The county in the Anderson case agreed to voluntarily produce the public records after the plaintiff sued. The plaintiff claimed that he "prevailed" in the lawsuit because he obtained the result he wanted (the production of the documents) even though the trial court and, ultimately, the Court of Appeals ruled against him. The Court of Appeals rejected this argument,

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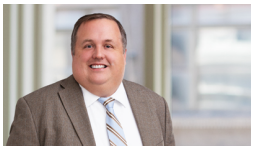

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and held instead that the plaintiff could not obtain fees because he had lost on the actual merits of his lawsuit.

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