



IN THE

# Indiana Supreme Court

Supreme Court Case No. 21S-MI-345

WTHR-TV,
*Appellant (Plaintiff below),*

–v–

Hamilton Southeastern Schools,
*Appellee (Defendant below),*
and
Rick Wimmer,
*Intervenor.*

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Argued: September 16, 2021 | Decided: January 13, 2022

Appeal from the Hamilton Circuit Court
No. 29C01-1806-MI-5244
The Honorable Paul A. Felix, Judge

On Petition to Transfer from the Indiana Court of Appeals
No. 20A-MI-1701

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**Opinion by Justice Massa**

Chief Justice Rush and Justices David, Slaughter, and Goff concur.

**Massa, Justice.**

WTHR-TV sought information about a Hamilton Southeastern Schools (HSE) employee under Indiana Code section 5-14-3-4(b)(8). That statute requires public agencies to disclose certain types of information in public employee personnel files, including the "factual basis" for some disciplinary actions. Following a contentious back-and-forth, HSE provided WTHR with a compilation of the requested information, but not the underlying documents in the personnel file.

WTHR sued, arguing it was entitled to the underlying documents and that HSE's factual basis for the employee's discipline was insufficient. The trial court sided with HSE on both issues, and an appellate panel affirmed. We conclude WTHR was not entitled to the underlying documents because an agency may compile the required information into a new document. We also conclude that a "factual basis" must be a fact-based account of what caused the discipline; it cannot be a bald conclusion, which is what HSE provided. Accordingly, we affirm in part, reverse in part, and remand.

# Facts and Procedural History

Rick Wimmer was a teacher and the head football coach at Fishers High School, which is part of HSE. In September 2016, Wimmer was placed on paid leave following an incident with a student during class. Fishers High announced the discipline, and WTHR reported on it. In December, HSE converted Wimmer's leave from paid to unpaid. WTHR made numerous attempts to obtain more information from HSE about Wimmer's discipline. Ultimately, it formally requested access to and copies of the portions of Wimmer's personnel file that contained disclosable information under Indiana Code section 5-14-3-4(b)(8).[1] This statute

[1] Although WTHR asserts it made two requests to obtain information from HSE, only its second request explicitly sought all required information under Indiana Code section 5-14-3-4(b)(8). Accordingly, we analyze only HSE's response to that second request.

requires public agencies to disclose three types of information in public employee personnel files: basic employee identifying information, information about formal charges, and the "factual basis" for certain types of final discipline. Ind. Code § 5-14-3-4(b)(8) (2016).

HSE responded with a compilation of information in an email but did not provide copies of the underlying documents containing the information. As for Wimmer's discipline, HSE stated in relevant part that "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." Appellant's App. Vol. II, p.65. That policy is titled "Staff Conduct" and contains broad requirements for staff, like requiring them to "demonstrate behaviors which contribute toward an appropriate school atmosphere." *Id.*, p.42.

WTHR was unsatisfied with this response and sued HSE. It sought copies of and access to Wimmer's disclosable records, all disclosable data comprising the factual basis for Wimmer's discipline, and the factual basis for the discipline. The trial court ruled for HSE, finding that WTHR was not entitled to specific documents in Wimmer's personnel file and that HSE provided a sufficient factual basis.

WTHR appealed, and the Court of Appeals affirmed. It found that because Indiana Code section 5-14-3-4(b)(8) identifies categories of information, HSE was only required to provide that information, not the underlying documents in Wimmer's file. *WTHR-TV v. Hamilton Se. Sch. Dist.*, 167 N.E.3d 301, 316–17 (Ind. Ct. App. 2021), *vacated*. The panel then noted that "the plain meaning of 'factual basis' in this context calls for a fact-based account of what led to the discipline." *Id.* at 318. And the panel found HSE's factual basis was sufficient, because it "explained the type of disciplinary action that was taken, the date the discipline was imposed, the length of the discipline, and why the discipline was issued, which was for Wimmer's failure to implement classroom management strategies consistent with school policy." *Id.* at 320.

WTHR sought transfer, which we granted. *WTHR-TV v. Hamilton Se. Schs.*, 171 N.E.3d 616 (Ind. 2021).

## Standard of Review

Statutory interpretation is a question of law, which we review de novo. *ESPN, Inc. v. Univ. of Notre Dame Police Dep't*, 62 N.E.3d 1192, 1195 (Ind. 2016). We also review an agency's denial of access to a public record de novo. I.C. § 5-14-3-9(f)–(g).

## Discussion and Decision

The Indiana Access to Public Records Act governs public records requests and "is intended to ensure Hoosiers have broad access to most government records." *Evansville Courier & Press v. Vanderburgh Cnty. Health Dep't*, 17 N.E.3d 922, 928 (Ind. 2014). Although it creates a right to "inspect and copy the public records of any public agency," I.C. § 5-14-3-3(a), that right is not absolute. The Act contains "a myriad of broad exceptions." *Robinson v. Ind. Univ.*, 659 N.E.2d 153, 156 (Ind. Ct. App. 1995), *trans. denied*. Relevant here, the personnel file exception excepts from the general "inspect and copy" requirement the "[p]ersonnel files of public employees and files of applicants for public employment, except for" three categories of information. I.C. § 5-14-3-4(b)(8). These categories are exceptions to the exception. We now hold that the personnel file exception only requires public agencies to disclose those three categories of information, which can be done by compiling them into a new document. And we hold that the required "factual basis" for discipline must contain facts about the employee's acts that caused the discipline.

### I. Indiana Code section 5-14-3-4(b)(8) requires public agencies to provide certain types of information, but it does not require them to provide the underlying documents.

When we interpret a statute, we give its undefined "words their plain meaning and consider the structure of the statute as a whole." *ESPN, Inc.*, 62 N.E.3d at 1195. When the General Assembly has defined a statutory

term, we are bound by its definition. *Smith v. State*, 867 N.E.2d 1286, 1288–89 (Ind. 2007). And we consider both what the statute does—and does not—say, *ESPN, Inc.*, 62 N.E.3d at 1195, because we cannot "add words or restrictions," *West v. Off. of Ind. Sec'y of State*, 54 N.E.3d 349, 353 (Ind. 2016).

The Act broadly declares "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." I.C. § 5-14-3-1. To that end, it creates the right to "inspect and copy the public records of any public agency . . . except as provided in section 4." I.C. § 5-14-3-3(a). School corporations, like HSE, are public agencies subject to the Act. I.C. § 5-14-3-2(q)(2)(A). And the Act broadly defines "public record" to include any writing or document created by a public agency. I.C. § 5-14-3-2(r).

Indiana Code section 5-14-3-4 provides mandatory and discretionary exceptions to the general "inspect and copy" requirement. The personnel file exception is discretionary: An agency may refuse to disclose public employee personnel files. I.C. § 5-14-3-4(b)(8). However, that exception contains three exceptions of its own. The first is basic identifying information: "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." I.C. § 5-14-3-4(b)(8)(A). The second is "information relating to the status of any formal charges against the employee." I.C. § 5-14-3-4(b)(8)(B). And the third is "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." I.C. § 5-14-3-4(b)(8)(C). An agency cannot withhold information identified in those three exceptions. There is also a special provision for employees accessing their own information: "However, all personnel file information shall be made available to the affected employee or the employee's representative." I.C. § 5-14-3-4(b)(8). Finally, the personnel file exception clarifies that it "does not apply to disclosure of personnel information generally on all employees or for groups of

employees without the request being particularized by employee name." *Id.*

The three exceptions identify specific information that must be turned over. They do not identify specific documents. For example, agencies must only turn over a "job description," not an original job posting. I.C. § 5-14-3-4(b)(8)(A). The specific information can be conveyed without providing the underlying documents. Other portions of the Act indicate that agencies are only required to turn over information. Another discretionary exception provides that it "does not apply to that **information** required to be available for inspection and copying under" the personnel file exception. I.C. § 5-14-3-4(b)(12) (emphasis added). The personnel file exception itself requires "affected employee[s]" be able to access "personnel file information," not the underlying documents. I.C. § 5-14-3-4(b)(8). The Act constantly references "information" in personnel files, not documents. The personnel file exception means that although public agencies generally do not have to disclose public employee personnel files, they must disclose certain categories of information found in those files.

Of course, the three categories of required information are exceptions to the general personnel file exception. *Unincorporated Operating Div. of Ind. Newspapers, Inc. v. Trs. of Ind. Univ.*, 787 N.E.2d 893, 915 (Ind. Ct. App. 2003) (analyzing personnel file exception when reviewing request for materials created during investigations of Bob Knight), *trans. denied*. Thus, the information in those three categories **is** subject to Indiana Code section 5-14-3-3(a), which allows any person to "inspect and copy the public records of any public agency." This means that public agencies must allow the inspection and copying of public records that contain the required personnel file information. As we previously noted, just about anything a public agency creates is a public record. I.C. § 5-14-3-2(r). When an agency compiles the required information into a new document, it creates a public record. If it allows a requester to inspect and copy that record, it has satisfied its obligations. Agencies must only turn over public records that contain the required information.

Certainly, the Act does not prohibit agencies from turning over the underlying documents in personnel files. And there are strong public policy arguments for requiring them to do so. For example, the Seventh Circuit has noted, in connection with a FOIA request to a federal agency, that a "preexisting internal document enjoys marks of authenticity and accuracy that are absent from one generated" after the fact in response to such a request. *Rubman v. U.S. Citizenship & Immigr. Servs.*, 800 F.3d 381, 390 (7th Cir. 2015). Moreover, "[g]enuine agency records also foster transparency by revealing . . . something about the **way** the agency operates" that later-generated records, without more context, cannot. *Id.* However, it is the General Assembly's job to consider the benefits of transparency, authenticity, and accuracy that arise from an agency turning over preexisting documents and act (or not). As things currently stand, the legislature has only required agencies to turn over public records that contain certain types of personnel file information. It has not required them to turn over underlying documents in personnel files. And this Court cannot "amend" the Act to impose such a requirement, because only the General Assembly can make the law. Ind. Const. art. 3, § 1; *State ex rel. Monchecourt v. Vigo Cir. Ct.*, 240 Ind. 168, 172, 162 N.E.2d 614, 616 (1959). This Court's job "is to interpret, not legislate." *ESPN, Inc.*, 62 N.E.3d at 1200.

HSE was not required to turn over the underlying documents in Wimmer's personnel file. Thus, it complied with the Act when it compiled the necessary information into a new document and provided that document to WTHR.

## II. Indiana Code section 5-14-3-4(b)(8) requires public agencies to provide a fact-based account of what led to an employee's discipline.

Although an agency may compile the required information from a personnel file into a new document, it must still provide sufficient information. Here, there is no dispute that HSE sufficiently conveyed the first two types of required information—identifying information and

information about formal charges. I.C. § 5-14-3-4(b)(8)(A)–(B). At issue is whether HSE provided a sufficient "factual basis" for Wimmer's discipline. I.C. § 5-14-3-4(b)(8)(C).

The Act does not define "factual basis," so we give that term its plain meaning. *ESPN, Inc.*, 62 N.E.3d at 1195. The Court of Appeals here, relying on dictionary definitions, found the plain meaning of "factual basis" to be "a fact-based account of what led to the discipline." *WTHR-TV*, 167 N.E.3d at 318. We agree with this definition and adopt it. However, it does not provide courts with much guidance for evaluating agency responses.

A "factual basis" requirement is not unique to the personnel file exception. It is also part of the criminal law—a trial court can only enter judgment upon a guilty plea if "there is a factual basis for the plea." I.C. § 35-35-1-3(b). Certainly, a criminal conviction differs from employment discipline in many important ways. But both involve wrongdoing and punishment. And the "factual basis" requirement for guilty pleas and the cases interpreting it preceded the requirement in the personnel file exception, which was enacted in 2003. Act of May 7, 2003, Pub. L. No. 200-2003, §3, 2003 Ind. Acts 1626, 1632–33 (amending the personnel file exception to add the "factual basis" requirement); *Butler v. State*, 658 N.E.2d 72, 76 (Ind. 1995) (noting the legislature "created a factual basis requirement [for guilty pleas] in 1971"). Thus, cases addressing the guilty plea requirement are helpful. *See Bragdon v. Abbott*, 524 U.S. 624, 645 (1998) ("When . . . judicial interpretations have settled the meaning of an existing statutory provision, repetition of the same language in a new statute indicates, as a general matter, the intent to incorporate its . . . judicial interpretations as well."); *State v. Whitney*, 889 N.E.2d 823, 827 (Ind. Ct. App. 2008) ("We presume the legislature knows the existing statutes when it adopts new statutes.").

When an agency provides a factual basis for employee discipline, it does not have to provide every intricate detail about what caused it to discipline an employee, but it must provide some facts about the employee's actions. *See Butler*, 658 N.E.2d at 77 (noting "a court need not find evidence proving guilt beyond a reasonable doubt to conclude that a factual basis exists" for a guilty plea). Those facts must be sufficient for a

reasonable person to understand what an employee did to deserve discipline. *See id.* ("[A] factual basis exists when there is evidence about the elements of the crime from which a court could reasonably conclude that the defendant is guilty."). Whether a factual basis is sufficient is necessarily a case-by-case determination. But an agency cannot satisfy its obligation with "bald conclusions." *See Buckner v. IRS*, 25 F. Supp. 2d 893, 897 (N.D. Ind. 1998) (noting that affidavits supporting application of a FOIA exemption "must assert more than mere bald conclusions to provide the court with an adequate factual basis for review").

HSE's most comprehensive "factual basis" was that "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." Appellant's App. Vol. II, p.65. It provides no facts about Wimmer's actions that led to his suspension. It only concludes that he violated a broad policy. It does not even say **when** he violated that policy. A reasonable person would not know what Wimmer did to merit discipline, only that HSE decided to discipline him because it decided he violated a policy.

The policy HSE references only compounds the insufficiency of its response. That policy is as broad as its name—"Staff Conduct." *Id.*, p.42. It contains several requirements that could result in discipline if violated; for example, an employee could violate the policy by failing to "demonstrate behaviors which contribute toward an appropriate school atmosphere." *Id.* Any number of actions could violate that one requirement. Here, it is unclear which requirement Wimmer violated, let alone what he did to warrant discipline. No reasonable person could read HSE's statement and policy and understand why HSE disciplined Wimmer.

HSE's "factual basis" was merely a bald conclusion that Wimmer violated a broad policy. It did not contain facts about Wimmer's actions that would allow a reasonable person to understand why he was suspended. HSE's "factual basis" was insufficient.

## Conclusion

We affirm the trial court's conclusion that HSE complied with the Act by providing a compilation of information. However, we reverse its conclusion that HSE provided a sufficient factual basis. Accordingly, we remand for further proceedings consistent with this opinion.

Rush, C.J., and David, Slaughter, and Goff, JJ., concur.

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