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IN THE COURT OF APPEALS OF INDIANA

WTHR-TV,

Appellant-Plaintiff,

v.

Hamilton Southeastern School District,

Appellee-Defendant,

and

Rick Wimmer,

Intervenor.

March 10, 2021

Court of Appeals Case No. 20A-MI-1701

Appeal from the Hamilton Circuit Court

The Honorable Paul A. Felix, Judge

Trial Court Cause No. 29C01-1806-MI-5244

Kirsch, Judge.

[1] This case concerns two public record requests submitted by WTHR-TV ("WTHR") under Indiana Code chapter 5-14-3 ("APRA") to the Hamilton Southeastern School District ("HSE") concerning HSE's discipline of its employee, Rick Wimmer[1] ("Wimmer"). Following WTHR's unsuccessful attempts to obtain the records it requested from HSE, in which the Indiana Public Access Counselor ("the PAC") issued three advisory opinions, two regarding the factual basis surrounding HSE's discipline of Wimmer and one regarding HSE's release of information extracted from Wimmer's personnel file pursuant to Indiana Code section 5-14-3-4(b)(8) ("the personnel file exception"), WTHR filed a complaint on June 8, 2018 to compel HSE to produce the records it sought from Wimmer's personnel file. WTHR appeals the trial court's order denying its motion to compel HSE to provide documents

[1] Pursuant to Indiana Code section 5-14-3-9(e), Wimmer intervened in the lawsuit. *Appellant's App. Vol. 2* at 6. Wimmer's attorney filed an appearance on his behalf in this appeal but did not file a brief. *Odyssey.*

and other additional information from Wimmer's personnel file. WTHR raises the following issues, which we revise and restate as:

> I. Whether HSE violated APRA by refusing to release to WTHR the records it requested from Wimmer's personnel file; and
>
> II. Whether HSE violated APRA by providing WTHR with an inadequate factual basis for the final disciplinary action taken against Wimmer.

[2] We affirm.

Facts and Procedural History

[3] In September 2016, Fishers High School Principal Jason Urban notified parents that Wimmer, who was a physical education teacher and head football coach at Fishers High School, had been placed on paid administrative leave following an incident with a student during a class at the school. *Appellant's App. Vol. 2* at 159, 173-74. HSE reported the incident to the Fishers Police. *Id.* WTHR independently obtained the Fishers Police report[2] of the incident, which occurred on September 13, 2016, and described the incident as follows:

> [a student] entere[d] the weight room at around 1:03 pm and he was confronted by [] Wimmer. The [school surveillance] video shows [] Wimmer and [redacted] talking and then [] Wimmer points in [redacted] direction. [] Wimmer walks towards him and places his right hand on [redacted] upper left arm and his left

[2] The police report lists "02/12/2018 14:50" as the date and time the report was printed. *Appellant's App. Vol. 2* at 160; 160-64.

> hand near [redacted] chest. [] Wimmer backs [redacted] up a few steps and then releases him. [] Wimmer walks away and you can't see him in the video anymore. [redacted] then leaves the weight room and goes to the locker room while being escorted by [] Wimmer. After getting dressed [redacted] goes to the Dean's office and meets with Mr. Miller.

Id. at 164. On September 23, 2016, HSE stated that "[t]he school district has concluded a thorough evaluation and has addressed the incident." *Id.* at 173.

[4] On December 14, 2016, the HSE Board of Education held a meeting and unanimously approved a "Consent Agenda" for "Certified Staff" that addressed various personnel matters and included a list of thirty-nine employees. *Id.* at 22, 34-36. Of the thirty-nine employees, thirty-eight were listed by name, position, school building, action for vote, and other information, and one was listed as "Employee #10042," with the notation "Teacher 5 days of suspension, unpaid." *Id.* WTHR later learned through its reporting that "Employee #10042" was Wimmer and that he had been suspended for five days without pay per the December 14, 2016 HSE Board of Education vote. *Id.* at 22, 24, 84.

[5] On January 5, 2017, WTHR reporter Bob Segall ("Segall") spoke with HSE Superintendent Dr. Allen Bourff ("Bourff") about the suspension, and Segall orally requested the following information about the suspension ("the first request"): (1) the name of the employee (which was unknown at the time) 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. *Id.* at 130-31. Bourff responded that same day via email and stated, "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." *Id.* at 134.

[6] On January 6, 2017, Segall spoke with the PAC, who informed Segall that Bourff's response did not sufficiently identify the factual basis for the disciplinary action. *Id.* at 131, 135. Segall emailed Bourff the next day seeking the factual basis for the suspension, including "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," information as to any other discipline HSE had taken against the employee, and the name and job title of "[E]mployee #10042." *Id.* On January 9, 2017, Segall eventually received a response from HSE that stated:

> 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.

Id. at 137.

[7] On January 12, 2017, Segall filed a formal complaint with the PAC regarding HSE'S response to the first request. *Id.* at 43-45, 131. On March 3, 2017, the PAC issued an advisory opinion[3] determining that the factual basis HSE had provided did not provide sufficient detail and concluding:

> "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 from the underlying deviation from an ascertainable standard of performance. . . . 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.

Id. at 141-42. The advisory opinion added "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." *Id.* at 142.

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[3] The PAC is appointed by the Governor pursuant to Indiana Code section 5-14-4-6 and has the authority, among other things, to provide guidance to public agencies and officials regarding Indiana's public access laws through the issuance of "advisory opinions" interpreting public access laws. Ind. Code § 5-14-4-10. We have stated that "[a]dvisory opinions, by definition, are 'nonbinding statements.'" *Groth v. Pence*, 67 N.E.3d 1104, 1111 n.4 (Ind. Ct. App. 2017) (quoting *Black's Law Dictionary* 1265 (10th ed. 2014)), *trans. denied.*

[8] On April 10, 2017, Segall filed another complaint with the PAC regarding HSE's failure to comply with the PAC's March 3, 2017 advisory opinion. *Id.* at 51-55. The PAC issued another advisory opinion on May 30, 2017. *Id.* at 144-48. The PAC acknowledged that in the March 3, 2017, "[w]hile I did not find HSE to be in violation of the APRA," "I thought their response leaned towards lacking sufficient detail." *Id.* at 145. As to factual basis, the PAC explained as follows:

> 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[(b)]. Like the APRA, factual basis is not defined in this statute, but case law has provided that "[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." *Butler v. State*, 658 N.E.2d 72, [77 (Ind. 1995) (footnote omitted)]. 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.* [at 76].
>
> 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 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."

Id. at 146-47. The PAC concluded that HSE had an "opportunity to correct what I determined to be a deficiency" and that "[t]herefore 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)." *Id.* at 148.

[9] Following the May 3, 2017 advisory opinion, Segall contacted HSE seeking additional detail about Wimmer's suspension pursuant to the second advisory opinion. *Id.* at 132, 149. On June 21, 2017, HSE's counsel responded in a letter to Segall's counsel that it "confirmed with the Public Access Counselor that he found **no** violation of . . . I.C. § 5-14-3-4(b)(8)(C)" and had "no obligation to supplement the information already provided pursuant to I.C. § 5-14-3-4(b)(8)(C)." *Id.* at 149. On October 30, 2017, WTHR and Segall submitted another APRA request ("the second request") to HSE, which sought "access to and copies of the portions of [Wimmer's] personnel file" containing 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.

Id. at 150. The second request also specified that it did "not ask for – nor is WTHR interested in – the name of any student." *Id.*

[10] On December 7, 2017, Segall received an email from HSE's Director of School and Community Relations, Emily Abbotts ("Abbotts"), which included

information about Wimmer, including his name, job, title, compensation, business telephone and address, his job description as both physical education teacher and head football coach, educational background, previous work experience, and his dates of first and last employment with HSE. *Id.* at 151-53. The email included no information as to part B of the second request because there were no formal charges against him. *Id.* at 152. As to part C of the second request, Abbots wrote that "[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." *Id.* at 153. On December 8, 2017, Segall responded to Abbotts's e-mail stating that the second request sought "access to and copies of the portions of [Wimmer's] personnel file" but that HSE's response did "not include or attach any records or portions thereof from his personnel file per the request." *Id.* at 27. Segall did not receive a response to his email. *Id.*

[11] On December 22, 2017, counsel for WTHR and Segall submitted another formal complaint with the PAC regarding HSE's response to the second request *Id.* at 69-73, 170. On February 8, 2018, the PAC issued another advisory opinion which addressed only Indiana Code section 5-14-3-4(b)(8)(A) because "[t]he 'factual basis' issue has been taken up by this Office on two prior occasions and will not be opined upon further here." *Id.* at 155 n.2. The PAC explained:

> 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.

Id. at 157-58. The PAC concluded that HSE "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." *Id.* at 158.

[12] Following the issuance of the May 8, 2018 advisory opinion, HSE did not respond further to the second request, and on June 8, 2018 WTHR filed a complaint in the Hamilton Superior Court that was transferred to the Hamilton Circuit Court on October 2, 2018. *Id.* at 7, 19-33. The complaint alleged that HSE violated APRA by denying WTHR access to: (1) the records it sought in the first and second request pursuant to Indiana Code section 5-14-3-4(b)(8)(A)-(C); (2) "all disclosable data" constituting the factual basis for Wimmer's

suspension in the first and second request; and (3) the factual basis for Wimmer's suspension in the first and second request. *Id.* at 28-31. In its request for relief, WTHR sought the trial court's permission to inspect and copy the records sought in its first and second request, to compel HSE to release "all disclosable data" that formed the factual basis for the suspension, to issue declaratory relief that WTHR could inspect and copy the requested records, that it was entitled to "all disclosable data" and had a right to the factual basis for the suspension. *Id.* at 31-32.

[13] On August 2, 2018, HSE responded to WTHR's complaint, denying that it violated APRA as alleged in WTHR's complaint. *Id.* at 79-100. It also alleged as affirmative defenses that the complaint failed to state a claim upon which relief could be granted, that certain records WTHR sought were exempt from release under APRA, that certain information WTHR sought was protected under the federal Family Educational Rights and Privacy Act, and that the complaint was moot because all non-exempt responsive information had been provided to WTHR. *Id.* at 99-100. In October of 2018, while the complaint was pending, Segall exchanged a series of emails with Wimmer, in which Wimmer stated that his unpaid suspension was for the September 13, 2016 incident that was described in the Fishers Police report.[4] *Id.* at 165-68.

[4] On September 6, 2018, the student who was involved in the September 13, 2016 incident with Wimmer filed a lawsuit in state court against HSE, Fishers High School, and Wimmer which was removed to federal court, and, following an August 8, 2019 settlement conference, the parties filed a joint stipulation of dismissal on September 19, 2019. *Appellant's App. Vol. 2* at 110-11, 171, 183-205. An exhibit list filed by the defendants

Specifically, Wimmer stated: "The 1-week suspension was for this same incident. There were not 2 incidents as you have inaccurately insinuated in your reporting. I was initially given a paid leave which converted to unpaid leave after investigation [sic] was complete." *Id.* at 167. Segall wrote to Bourff and Abbots seeking confirmation of Wimmer's statements, but neither Bourff nor Abbots answered Segall's question regarding Wimmer's statements. *Id.* at 133, 169.

[14] On April 24, 2020, after undertaking discovery, WTHR filed a motion to compel in which it argued that HSE was in violation of APRA for its failure to provide it access to the portions of Wimmer's personnel file and to the factual basis that it sought in its complaint. *Id.* at 7-11, 101-205. On June 8, 2020, HSE filed its response to the motion to compel, and on June 26, 2020, WTHR filed its reply in support of the motion to compel. *Appellant's App. Vol. 3* at 2-35. On August 18, 2020, the trial court issued its order and entry of judgment in favor of HSE and denying WTHR's request for additional documents and information concerning Wimmer. *Appellant's App. Vol. 2* at 13-18. The trial court's order provided, in pertinent part, as follows:

> **Personnel file**
>
> There is no dispute that the records sought are part of a personnel file. HSE has met its burden of showing that the documents

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in that action before the action's settlement and dismissal referred to a "[v]ideo from September 13, 2016." *Id.* at 202.

sought are within the exception to disclosure provided in Section 4(b)(8) of APRA.

The burden shifted to WTHR to show that HSE's exercise of the discretionary exemption is arbitrary and capricious. *See* I.C. § 5-14-3-9(g). WTHR did not meet its burden. It provided no evidence that HSE arbitrarily or capriciously applied the discretionary exemption in Section 4(b)(8). WTHR is not entitled to access to or copies of documents contained within [] Wimmer's personnel file. WTHR's request for access to and copies of documents contained within [] Wimmer's personnel file is denied.

Documents providing information

Even though HSE may deny WTHR's request to inspect and copy the documents contained within [] Wimmer's personnel file, I.C. § 5-14-3-4-(a)(8)(A-C) identifies specific information that must be disclosed. The dispute in this case is whether the information listed in Subsection (8)(A-C) must be provided by producing copies of documents contained within the employee's personnel file, or if a statement providing the information identified in Subsection 4(b)(8)(A-C) complies with the statute.

The [PAC] has addressed this issue, but the Indiana appellate courts have not. Having considered this question and the appropriate application of Subsection 4(b)(8)(A-C), the PAC has concluded that "the items listed under [I.C. §] 5-14-3-4(b)(8)(A-C) are not 'public records' in and of themselves, but are 'information' that may be contained in public records that are typically maintained in public employees' personnel files." *See Opinion of the Public Access Counselor* 02-FC-22, at page 3. Additionally, the PAC found that "if the public agency declines to make the entire personnel file available, the public agency is required to disclose certain information." *See Opinion of the Public*

Access Counselor 06-FC-2 and 06-FC-03 (consolidated). A factual basis for disciplinary action is one of the items that must be disclosed. *See* I.C. § 5-14-3-4(b)(8)(C). The PAC has concluded that in order to produce "the 'factual basis' for a final disciplinary action, the agency must disclose the factual basis from any responsive records maintained by the agency." *See Opinion of the Public Access Counselor* 12-FC-110.

The PAC opinions are not binding or controlling authority. However, the Indiana Court of Appeals has advised that "in the absence of case law or adequate statutory authority, this Court should give considerable deference to the opinions of the Public Access Counselor." *Anderson v. Huntington Cnty. Bd. of Comm'rs*, 983 N.E.2d 613, 618 (Ind. Ct. App. 2013)[, *trans. denied.*] Having found an absence of case law, this Court gives deference to the PAC opinions on the topic of how a public agency may comply with I.C. § 5-14-3-4(b)(8)(A-C), and applies the plain meaning of the statute. The statute specifically exempts from disclosure an [employee's] personnel file. While subsection 4(b)(8)(A-C) requires a public employer to provide specific information about an employee, it does not require the employer to provide the documents in the personnel file containing that information. HSE did not violate APRA when it provided information requested instead of producing specific documents from [] Wimmer's personnel file. WTHR's request that HSE be compelled to produce specific documents is denied.

Factual Basis

WTHR contends that the information HSE provided was not sufficient to satisfy the factual basis requirement of subsection 4(b)(8)(C). Subsection 4(b)(8)(C) does not define the term "factual basis." The PAC has considered what constitutes a factual basis on many occasions. That office has found that a factual basis requires "a brief statement of why the employee was

> disciplined." *Opinion of the Public Access Counselor* 04-FC-73, 04-FC-75, and 04-FC-80 (consolidated). HSE has provided a brief statement of why [] Wimmer was placed on an unpaid suspension on December 14, 2016. WTHR's request that HSE be compelled to provide additional information as to the basis for that suspension is denied.

Id. at 15-18. WTHR now appeals.

Discussion and Decision

[15] WTHR argues that it should not have been denied access to the relevant portions of the records it requested from Wimmer's personnel file, and that HSE did not provide it with an adequate factual basis for the discipline. Under the Indiana Code, the trial court's review of WTHR's complaint for an alleged APRA violation was de novo, or without deference to the public agency that denied the access, and the initial burden of proof in the trial court was on the agency. Ind. Code § 5-14-3-9(f), (g)(1). The public agency meets its burden of proof by showing that the undisclosed records fall within an exception listed under Indiana Code section 5-14-3-4 and by establishing the content of those records with adequate specificity beyond merely relying on a conclusory statement or affidavit. Ind. Code § 5-14-3-9(f), (g). If the undisclosed records fall within a discretionary exception listed under Indiana Code section 5-14-3-4(b), it is in the agency's discretion not to disclose the records. Once the agency has met its initial burden of proof to show that undisclosed records fall within a discretionary exception under section 4(b), the burden shifts to the complaining party to demonstrate that the agency's denial of his access to those records was

"arbitrary and capricious." Ind. Code § 5-14-3-9(g). Because the trial court's review of the agency action was, as a matter of law, de novo, and because the only evidence presented to the trial court here were paper records, we are in just as good a position on appeal as the trial court was to consider the merits of WTHR's complaint. *Groth v. Pence*, 67 N.E.3d 1104, 1112 (Ind. Ct. App. 2017) Accordingly, our review of the trial court's judgment is de novo. *Id.* (citation omitted).

[16] WTHR also argues that the denial of its access to the records and factual basis of the suspension involves the interpretation of the personnel file exception under APRA. The meaning of a statute is a question of law and is subject to de novo review. *Adams v. State*, 960 N.E.2d 793, 797 (Ind. 2012). We interpret statutes as follows:

> Our first task when interpreting a statute is to give its words their plain meaning and consider the structure of the statute as a whole. *West v. Office of Indiana Sec'y of State*, 54 N.E.3d 349, 353 (Ind. 2016). We "avoid interpretations that depend on selective reading of individual words that lead to irrational and disharmonizing results." *Id.* at 355 (internal quotation omitted). As we interpret the statute, we are mindful of both "what it 'does say' and what it 'does not say.'" *Day v. State*, 57 N.E.3d 809, 812 (Ind. 2016) (quoting *State v. Dugan,* 793 N.E.2d 1034, 1036 (Ind. 2003)). To the extent there is an ambiguity, we determine and give effect to the intent of the legislature as best it can be ascertained. *Moryl v. Ransone*, 4 N.E.3d 1133, 1137 (Ind. 2014). "[W]e do not presume that the Legislature intended language used in a statute to be applied illogically or to bring about an unjust or absurd result." *Anderson v. Gaudin*, 42 N.E.3d 82, 85 (Ind. 2015) (internal quotation omitted).

ESPN, Inc. v. Univ. of Notre Dame Police Dep't, 62 N.E.3d 1192, 1195-96 (Ind. 2016).

[17] In interpreting APRA specifically, we apply a presumption in favor of disclosure, given its public purpose of promoting government transparency. *Evansville Courier & Press v. Vanderburgh Cnty. Health Dep't.*, 17 N.E.3d 922, 929 (Ind. 2014). We have also held that while we are required to construe exceptions to public disclosure laws strictly, that does not mean that we will contravene expressed exceptions specified by the Legislature. *Journal Gazette v. Bd. of Trs. of Purdue Univ.*, 698 N.E.2d 826, 828 (Ind. Ct. App. 1998). In construing the material in clauses (A) through (C) of the personnel file exception, we have described those clauses as an exception to the 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), *trans. denied*.

[18] WTHR contends that:

> When [the personnel file exception is] read in conjunction with APRA's Section 5-14-3-3 (requiring copies of public records to be made available upon request) and Section 5-14-3-6(a) (concerning segregability), the plain text of these provisions tell an agency exactly how to respond to a request: if the agency elects to assert the personnel file exemption, it must still separate and release those portions of the personnel file that contain the non-exempt information that Section 5-14-3-4(b)(8)(A)-(C) expressly requires be disclosed.

Appellant's Br. at 19 (emphasis in original). WTHR maintains that HSE could not satisfy its disclosure obligations under APRA "merely by issuing a

statement in lieu of providing access to the underlying government records." *Id.* at 20. It also asserts that the records it sought are specifically not excluded from disclosure pursuant to the text of clauses (A) through (C) of the personnel file exception. WTHR also contends that we need not defer to PAC opinions on this issue because APRA's plain language is "perfectly clear" on a public agency's obligation to release the records containing the information set forth in clauses (A) through (C) of the personnel file exception. *Appellant's Reply Br.* at 12.

[19] In contrast, HSE contends that WTHR is asking us "to re-write APRA and require the disclosure of *documents*, rather than *information*, in a public employee's personnel file, even though the legislature did not provide for such disclosure." *Appellee's Br.* at 15 (emphasis in original). To that end, it maintains that the information listed in clauses (A) through (C) of the personnel file exception is not required to be released. HSE argues that "the statute identifies categories of information that must be provided, but does not make any effort to identify documents that must be provided. If the legislature wanted to require the release of documents, not just information, it could have done so, but it did not." *Appellee's Br.* at 20.

[20] We first discuss the statutory framework of APRA. APRA establishes a framework for the release of public records and sets forth as its underlying public policy and purpose 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" and calls for APRA to

be liberally construed to implement its policy. Ind. Code § 5-14-3-1. To this end, APRA requires a "public agency" (there is no dispute that HSE is a public agency) to permit a person to "inspect and copy the public records of any public agency during the regular business hours of the agency, *except as provided in section 4 of this chapter*." Ind. Code § 5-14-3-3(a) (emphasis added).

[21] The right to inspect and copy, however, is subject to a number of exceptions, both mandatory and discretionary. *See generally* Ind. Code § 5-14-3-4(a)-(b). At issue in this appeal is the application of the discretionary exception for the personnel files of public employees and applicants for public employment from the right to be inspected and copied, which provides that "the following public records shall be excepted from section 3 of this chapter at the discretion of a public agency, except in cases where the public record is subject to mandatory nondisclosure under subsection (a)." Ind. Code § 5-14-3-4(b). Specifically, the discretionary personnel file exception provides as follows:

> (8) Personnel files of public employees and files of applicants for public employment, *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.
>
> However, all personnel file information shall be made available to the affected employee or the employee's representative. This subdivision 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.

Ind. Code § 5-14-3-4(b)(8) (emphasis added). Indiana Code section 5-14-3-6 addresses the situation in which a public agency has a public record that contains both "disclosable and nondisclosable" material. Ind. Code § 5-14-3-6(a). It provides that "[i]f a public record contains disclosable and nondisclosable information, the public agency *shall*, upon receipt of a request under this chapter, *separate the material that may be disclosed and make it available for inspection and copying*." Ind. Code § 5-14-3-6(a) (emphasis added).

I. The Personnel File Exception

[22] In view of this background, WTHR contends that the material described in clauses (A) through (C), which we have described as an exception to the exception *see Ind. Newspapers*, 787 N.E.2d at 915, is disclosable in the same fashion as any other record pursuant to Indiana Code section 5-14-3-3 and

subject to Indiana Code section 5-14-3-6.[5] We disagree with WTHR that this is the correct reading of clauses (A) through (C) of the personnel file exception.

[23] The text of the personnel file exception expressly provides that "the following *public records* shall be excepted from section 3 of this chapter at the discretion of a public agency . . . ." (emphasis added). Ind. Code § 5-14-3-4(b)(8). The personnel file exception thus excepts *public records* from disclosure by a public agency except for the categories set forth in clauses (A) through (C). Ind. Code § 5-14-3-4(b)(8)(A)-(C). Thus, the categories described in clauses (A) through (C) have as their source an employee's personnel file, which is a public record. There is no doubt that a public employee's personnel file is not disclosable at the discretion of a public agency. The question is how are the responsive

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[5] As an initial matter, we agree with the trial court that WTHR did not meet its burden to show that HSE's invocation of the personnel file exception was arbitrary and capricious. "An arbitrary and capricious decision is one which is 'patently unreasonable' and is 'made without consideration of the facts and in total disregard of the circumstances and lacks any basis which might lead a reasonable person to the same conclusion.'" *A.B. v. State*, 949 N.E.2d 1204, 1217 (Ind. 2011) (quoting *City of Indianapolis v. Woods*, 703 N.E.2d 1087, 1091 (Ind. Ct. App. 1998)). WTHR correctly observes that the material in clauses (A) through (C) of the personnel file exception has been characterized as an exception to the exception; however, as discussed more fully in our analysis of WTHR's statutory interpretation arguments, the underlying records themselves are a part of an employee's personnel file, and WTHR has not shown that HSE failed to adequately establish the content of the records from Wimmer's personnel file that it sought not to disclose. *See* Ind. Code § 5-14-3-9(g)(1)-(2). We acknowledge that, with respect to the deliberative materials exception which is also a discretionary exception, we have stated "[t]o permit an agency to establish that a given document, or even a portion thereof, is non-discloseable simply by proving that some of the documents in a group of similarly requested items are non-discloseable would frustrate this purpose and be contrary to [Indiana Code section 5-14-3-6]." *Unincorporated Operating Div. of Ind. Newspapers, Inc. v. Trs. of Ind. Univ.*, 787 N.E.2d 893, 914 (Ind. Ct. App. 2003), *trans. denied*. Simply because the information in clauses (A) through (C) is an exception to the exception, does not mean that a public agency acts arbitrarily and capriciously by invoking the personnel file exception in such a situation. When we interpret statutes, "every word is to be given effect and no part of the statute is to be construed as meaningless if it can be reconciled with the rest of the statute." *Hannis v. Deuth*, 816 N.E.2d 872, 876 (Ind. Ct. App. 2004). Therefore, we cannot say that WTHR has met its burden to show that HSE's exercise of the personnel file exception was arbitrary and capricious.

records which would provide a requester with the information set forth in clauses (A) through (C) required to be provided when a requester seeks such records and the public agency invokes the personnel file exception. The personnel file exception is silent on how a public agency must provide the information to a requester to comply with clauses (A) through (C) even when it invokes the exception. Clauses (A) through (C) of the personnel file exception contain no express language that specifies the *manner* in which a public agency must provide the information described therein nor do any of those clauses use language that specifically refers to the release of records or documents.

[24] Clause (A) speaks in terms of general, biographical and employment information which does not seem to inherently require the disclosure of a public record to assure that the public receives this information, which could be spread across many records within a personnel file. Similarly, clause (B) expressly provides that as to the "status of any formal charges" against an employee that a public agency must provide "information." Ind. Code § 5-14-3-4(b)(8)(B). We do not read anything in the plain language of either of these clauses to indicate that the General Assembly intended to require a public agency to produce a specific public record or records containing such information from a personnel file to comply with clauses (A) and (B).

[25] Clause (C) provides that a public agency must provide a "factual basis" in the case of final, disciplinary action that results in a public employee's suspension, demotion, or discharge. Ind. Code § 5-14-3-4(b)(8)(C). The language in this clause was amended during the 2003 legislative session. During that legislative

session, the term factual basis was added to Indiana Code section 5-14-3-4(b)(8)(C) ("the 2003 Amendment"), which amended the text of the personnel file exception (effective July 1, 2003) as follows:

> (8) Personnel files of public employees and files of applicants for public employment, 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) ~~information concerning~~ **the factual basis for a** disciplinary ~~actions~~ **action** in which final action has been taken and that resulted in the employee being ~~disciplined~~ **suspended, demoted, or** discharged.
>
> However, all personnel file information shall be made available to the affected employee or the employee's representative. This subdivision 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.

Pub. L. No. 200-2003, § 3. The 2003 Amendment did not define "factual basis" and the substance of the personnel file exception has been unchanged since the 2003 Amendment.[6]

[26] The legislative intent behind a statute "may be identified and effectuated by examining the act as a whole, the law existing before its passage, changes made to the law since enactment and the reasons for those changes." *Miller Brewing Co. v. Bartholemew Cnty. Beverage Co.*, 674 N.E.2d 193, 205 (Ind. Ct. App. 1996), *trans. denied*; *see also Von Tobel Corp. v. Chi-Tec Const. & Remodeling, Inc.*, 994 N.E.2d 1215, 1218 (Ind. Ct. App. 2013) (citations omitted) (noting, where meaning is uncertain, "the courts will look also to the situation and circumstances under which [the statute] was enacted"). The changes to clause (C) by the 2003 Amendment suggest that "factual basis" was intended to mean something different from "information"; however, there is nothing inherent in the use of the term "factual basis" to indicate that a particular public record or records is required to be disclosed to satisfy this clause.

[27] While the language of clauses (A) through (C) of the personnel file exception could be read to require that the public agency must provide the public records themselves in accordance with Indiana Code section 5-14-3-3 and redacted pursuant to Indiana Code section 5-14-3-6 as applicable, we do not believe it is

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[6] Following the 2003 legislative session, the legislature enacted multiple laws, each of which amended different parts of Indiana Code section 5-14-3-4, and effective July 1, 2005, the legislature reconciled the language from the two versions of Indiana Code section 5-14-3-4 that resulted from the 2003 amendments. *See* Pub. L. No. 210-2005, § 1 (effective July 1, 2005).

the reading that the General Assembly intended. Compare, for example, the language of the personnel file exception to that of Indiana Code section 5-14-3-4(b)(5)(A)-(D), another discretionary exception that employs a similar exception to the exception structure and applies to the records of certain public agencies "with industrial, research, or commercial prospects, if the records are created while negotiations are in progress." Ind. Code § 5-14-3-4(b)(5)(A). Clause (B) of that statute provides that "[n]otwithstanding clause (A), the terms of the final offer of public financial resources communicated by [the applicable public agency] to an industrial, a research, or a commercial prospect shall be available for inspection and copying under section 3 of this chapter after negotiations with that prospect have terminated." Ind. Code § 5-14-3-4(b)(5)(B).[7] Unlike the personnel file exception, this particular discretionary exception specifically provides that the "terms of the final offer of public financial resources . . . shall be available for inspection and copying *under section 3 of this chapter*," which shows the legislature's intent to draw a clear link between the exception to the exception for the final offer of public financial resources and its effect with respect to the disclosure of that information. We

[7] Another panel of this court recently construed the meaning of the undefined term "final offer" in the phrase "the terms of the final offer of public financial resources," holding that the Indiana Economic Development Corporation's responses to both "Amazon's initial [request for proposals] and its subsequent [request for information] and questionnaire were parts of on-going negotiations with Amazon that had not developed yet into 'terms of the final offer of public financial resources.' [Ind. Code] § 5-14-3-4(b)(5)(A), (B). As such, the [Indiana Economic Development Corporation] had discretion to deny [Tax Analysts] request for copies of those records. *Id.*" *Tax Analysts v. Ind. Econ. Dev. Corp.*, No. 20A-PL-1141, 2020 WL 7776139, at *4-8 (Ind. Ct. App. Dec. 31, 2020), *trans. pending*.

do not read any language that draws a connection to the general disclosure requirement of Indiana Code section 5-14-3-3 in clauses (A) through (C) of the personnel file exception. By the same token, we read nothing in the language of clauses (A) through (C) of the personnel file exception to prohibit a public agency from compiling such materials from a public employee's personnel file and disclosing them with any necessary redactions pursuant to Indiana Code section 5-14-3-6 to meet its obligations under clauses (A) through (C) of the personnel file exception. In our de novo review of the interpretation of clauses (A) through (C) of the personnel file exception within APRA's broader framework, we do not read that language to expressly *require* the release of the underlying public records from a public employee's personnel file nor do we read a firm connection showing that the effect of clauses (A) through (C) as an exception to the exception results in that information being subject to the general disclosure requirement of Indiana Code section 5-14-3-3. *See Kitchell v. Franklin*, 997 N.E.2d 1020, 1026 (Ind. 2013) (noting that courts do not engraft new words or add restrictions to a statute).

[28] We acknowledge that the trial court deferred to PAC advisory opinions in reaching its conclusion, including a 2002 advisory opinion that was based on the version of the personnel file exception that was in effect before the 2003 Amendment, in concluding that clauses (A) through (C) of the personnel file exception required only the provision of information and not the production of the underlying public records. As WTHR and HSE recognize, there is no case law interpreting what a public agency is required to provide under clauses (A)

through (C) of the personnel file exception. WTHR argues that the PAC "repudiated" *Re: Advisory Opinion 02-FC-22; Alleged Violation of the Access to Public Records Act by the Allen Superior Court, Family Relations Division* (July 3, 2002), https://www.in.gov/pac/advisory/files/2002fc22.pdf ("the 2002 advisory opinion") in *Re: Consolidated Formal Complaints 06-FC-2; 06-FC-3; Alleged Violation of the Access to Public Records Act by Porter, a County Hospital* (Feb. 2, 2006), https://www.in.gov/pac/advisory/files/06-FC-2_06-FC-3.pdf ("the 2006 advisory opinion"). *Appellant's Br.* at 21. We may look to the opinions of the PAC and have held that the opinions of the PAC are not binding authority, but "in the absence of case law or adequate statutory authority, this Court should give considerable deference" to those opinions. *Anderson v. Huntington Cnty. Bd. of Comm'rs*, 983 N.E.2d 613, 618 (Ind. Ct. App. 2013), *trans. denied*. In contrast, in cases where there is case law or the statutes are clear, courts do not owe deference to PAC opinions. *See e.g.*, *Carroll Cnty. E911 v. Hasnie*, 148 N.E.3d 996, 1004 (Ind. Ct. App. 2020); *Groth*, 67 N.E.3d at 1112 n.4.

[29] The trial court cited the 2002 advisory opinion for the conclusion that "the items listed under Indiana Code section 5-14-3-4(b)(8)(A-C) are not 'public records' in and of themselves, but are 'information' that may be contained in public records that are typically maintained in public employees' personnel files." *Appellant's App. Vol. 2* at 16-17. The trial court also cited the 2006 advisory opinion for the statement that "if the public agency declines to make the entire personnel file available, the public agency is required to disclose certain information." *Id.* at 17. WTHR emphasizes that following the 2003

Amendment to clause (C), the 2006 advisory opinion's statement that "[t]he underpinnings for our opinion in [the 2002 advisory opinion], the use of the term 'information,' is no longer in play in the current version" of clause (C) of the personnel file exception as evidence that the 2002 advisory opinion was repudiated. *See 06-FC-02; 06-FC-03.* The 2006 advisory opinion also observed that "[a]lthough I do not disapprove of an agency opting to draft a factual basis by creating a new document when the requester is agreeable to this method of compliance with the APRA, I can find no basis for adhering to that part of [the 2002 advisory opinion] relating to this issue, in light of the change in the language." *See 06-FC-02; 06-FC-03*. It is not clear that this was in fact a repudiation of the 2002 advisory opinion's observation that clauses (A) through (C) of the personnel file exception refer to information contained within public records in a personnel file; rather, the 2006 advisory opinion concluded that "[i]f a person requests a record containing the 'factual basis' for a final disciplinary action, the agency must disclose the factual basis from any responsive records," but, citing Indiana Code section 5-14-3-6, noted that a public agency "is not required to disclose every part of a record or records that contain the "factual basis." *See 06-FC-02; 06-FC-03*; *see also Re: Formal Complaint 08-FC-184; Alleged Violation of the Access to Public Records Act by the City of Greenfield* (Aug. 25, 2018), https://www.in.gov/pac/advisory/files/formal_opinion_08-FC-184.pdf (observing that "if records do exist which provide the factual basis for the disciplinary action, at least the portion of the records containing the factual basis would be disclosable but that other information contained in the record

may fall under an exception to disclosure, depending on the nature of the information" and citing Indiana Code section 5-14-3-6.) While such language in those advisory opinions is suggestive of a requirement to disclose the record or part of a record containing the factual basis from any responsive records, as previously noted we do not read the language of clause (C) of the personnel file exception to expressly require such disclosure. In addition, we also note that Indiana Code section 5-14-3-4(b)(12), another discretionary exception that covers "[r]ecords specifically prepared for discussion or developed during discussion in an executive session under IC 5-14-1.5-6.1," specifies that it "does not apply to that *information* required to be available for inspection and copying under subdivision (8)." Ind. Code § 5-14-3-4(b)(12) (emphasis added). Subdivision (12) was not amended as part of the 2003 Amendment's changes to clause (C) and continued to refer to clauses (A) through (C) of the personnel file exception as information; it has also not been amended, suggesting that clauses (A) through (C) are categories of information that a public agency is required to provide from any responsive records contained within a personnel file.[8] Because we find adequate statutory authority to support the conclusion that HSE was not required to provide the underlying public records to respond to WTHR's request, we need not defer to PAC opinions. We cannot say that the

[8] This language serves the purpose of specifying "that records excepted by section 4(b)(12) are nonetheless subject to the exceptions listed in section 4(b)(8)(A) through (C)." *Ind. Newspapers*, 787 N.E.2d at 915.

trial court's conclusion that HSE's provision of information to WTHR rather than the records themselves was in error.

II. Factual Basis

[30] WTHR also argues that HSE did not provide an adequate factual basis for the incident that led to Wimmer's suspension in its response to WTHR's public records requests. As both parties recognize there is no case law interpreting what is meant by factual basis as the term is used in clause (C) of the personnel file exception, and, as noted, we may defer to the PAC to ascertain the meaning. *See Anderson*, 983 N.E.2d at 618. WTHR contends that the term factual basis, which was not defined when it was first added to clause (C) of the personnel file exception via the 2003 Amendment and has not been subsequently defined by the General Assembly, should be interpreted according to its plain meaning and as that term is understood in other contexts.[9] HSE contends that we should defer to the PAC's definitions of factual basis.

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[9] Because an application of the plain meaning of factual basis is sufficient to resolve the dispute, we need not address WTHR's arguments that we should adopt the interpretation of the term in the case law interpreting Indiana Code section 35-35-1-3(b) regarding the factual basis for a plea of guilty in the criminal context and in the case law interpreting Indiana Code section 34-13-3-5(c) under the Indiana Tort Claims Act ("ITCA") as it relates to complaints alleging wrongdoing by an employee of a governmental entity in the employee's individual capacity. In the guilty plea context, we do not believe that the same constitutional protections that are implicated with respect to a plea of guilty are at play here. Similarly, in the ITCA context we note that the statutory phrase used in Indiana Code section 34-13-3-5(c) is a "*reasonable* factual basis" and is used in the context of suing an employee of a governmental entity in the employee's personal capacity. We do not believe that the standard for bringing a lawsuit and the goal of APRA to provide "full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees" are substantially similar purposes. Ind. Code § 5-14-3-1. Thus, we do not consider factual basis, as used in the personnel file exception, to be a situation involving "[s]tatutes relating to the same general subject matter" that are "*in pari materia* on the same subject" that "should be construed together so as to produce a harmonious statutory scheme" with respect to either of the statutes which WTHR suggests

[31] As noted, the 2003 Amendment did not define the term factual basis, and it remains undefined. The Indiana Code provides that in such a situation, "[w]ords and phrases shall be taken in their plain, or ordinary and usual, sense." Ind. Code § 1-1-4-1(1). Thus, "we start with the plain language of the statute, giving its words their ordinary meaning and considering the structure of the statute as a whole." *West*, 54 N.E.3d at 353. The relevant dictionary definition of "factual" is "of or relating to facts" or "restricted to or based on fact." https://www.merriam-webster.com/dictionary/factual (last accessed Feb. 24, 2021). In turn, "fact" is defined as "something that has actual existence," "an actual occurrence," "a piece of information presented as having objective reality," "the quality of being actual: actuality," "a thing done: such as . . . crime . . . action . . . feat," or "performance, doing." https://www.merriam-webster.com/dictionary/fact (last accessed Feb. 24, 2021). "Basis" is defined as "the bottom of something considered as its foundation," the "principal component of something," "something on which something else is established or based," "an underlying condition or state of affairs," "a fixed pattern or system," or "the basic principle." https://www.merriam-webster.com/dictionary/basis (last accessed Feb. 24, 2021). Thus, the plain meaning of "factual basis" in this context calls for a fact-based account of what led to the discipline.

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provide the meaning of factual basis, *see Klotz v. Hoyt,* 900 N.E.2d 1, 5 (Ind. 2009), nor do we need to consult case law interpreting the phrase in those contexts to guide our analysis.

[32] As to factual basis, the trial court's order stated that "[t]he PAC has considered what constitutes a factual basis on many occasions" and "has found that a factual basis requires 'a brief statement of why the employee was disciplined.' *Opinion of the Public Access Counselor* 04-FC-73, 04-FC-75, and 04-FC-80 (consolidated)." *Appellant's App. Vol. 2* at 18. The PAC has ascribed a similar meaning to factual basis in other advisory opinions. *See, e.g. Re: Formal Complaint 10-FC-212; Alleged Violation of the Access to Public Records Act by the Indiana Department of Natural Resources* (Oct. 18, 2010), https://www.in.gov/pac/advisory/files/10-FC-212.pdf (stating that a factual basis does not require that "every minute detail regarding the discipline should be disclosed; rather, the 'chief component' should be" and concluding that the Indiana Department of Natural Resources had "disclosed that chief component . . . by informing you that the suspension was the result of the officer's disobeying a direct order.") However, other PAC advisory opinions have taken a different approach and required the disclosure of more detail. *See Re: Formal Complaint 15-FC-186; Alleged Violation of the Access to Public Records Act by the City of New Albany and the New Albany Police Department* (July 20, 2015), https://www.in.gov/pac/advisory/files/15-FC-186.pdf ("I do not believe a short, cursory statement is always sufficient to satisfy the General Assembly's intention to make the factual basis of discipline known to the public."); *Re: Formal Complaint 16-FC-164; Alleged Violation of the Access to Public Records Act by the Elkhart County Human Resources Department* (Aug. 25, 2016), https://www.in.gov/pac/advisory/files/16-FC-164.pdf (noting that while previous public access counselors had taken that view the undefined term,

factual basis, "may be cursory in nature and satisfied by a mere reference to a policy" that "'[f]actual 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.") Recognizing the challenges of determining what a public agency is required to disclose to satisfy its obligation to provide a factual basis, the PAC has also noted:

> If disputes continue to occur regarding how much detail of the "factual basis" of discipline should be released to the public, perhaps the General Assembly should clarify its intent with a more specific list of the type of information that agencies should release upon request. Without such specificity, it will remain difficult for agencies to determine whether they have satisfied their disclosure obligations under the APRA, and also for members of the public (and this office) to recognize when agencies' responses are noncompliant.

Re: Formal Complaint 11-FC-149; Alleged Violation of the Access to Public Records Act by the Indiana Department of Natural Resources (July 13, 2011), https://www.in.gov/pac/advisory/files/11-FC-149.pdf.

[33] With this background in mind to inform our application of the plain meaning of factual basis, we first note that the term's plain meaning does not entail a specific level of detail that must be provided. At the time WTHR published its September 16, 2016 story about the incident, it was aware that Wimmer was involved and that the incident had been reported to Fishers Police. *Appellant's*

App. Vol. 2 at 159. Wimmer was then disciplined on December 14, 2016. *Id.* at 22, 34-36, 84. HSE provided as a factual basis in its responses to WTHR's two requests that Wimmer was suspended "due to not implementing instructions for classroom management strategies," which was later supplemented to indicate that he was suspended on December 14, 2016 for five days without pay and that the discipline was issued for failure to implement instruction for classroom management strategies in accordance with HSE policy G02.06.[10] *Id.* at 134, 137, 153. Among other things, the policy HSE referred to in its response and provided to WTHR mentions that it contemplates a "process of sharing information concerning the employees of Hamilton Southeastern Schools who are involved in alleged criminal acts" and includes a heading which states "Employee Disclosure of Criminal Arrests and Criminal Charges:" regarding an employee's obligation to report a criminal arrest or filing of criminal charges. *Id.* at 42, 44.

[34] At some point, WTHR also independently obtained the Fishers Police report, which set forth a substantially more detailed account of the incident:

> [a student] entere[d] the weight room at around 1:03 pm and he was confronted by [] Wimmer. The [school surveillance] video shows [] Wimmer and [redacted] talking and then [] Wimmer

[10] We note that the trial court did not defer to either of PAC's two advisory opinions addressing the content of the factual basis that HSE provided in this case. We have stated that "when a complaint is filed in a trial court *after* the Public Access Counselor has rendered an advisory opinion on the matter, the court may find the Public Access Counselor's opinion persuasive but the court owes no deference to that opinion." *Groth v. Pence*, 67 N.E.3d 1104, 1112 n.4 (Ind. Ct. App. 2017), *trans. denied.* In conducting its de novo review of WTHR's complaint, the trial court declined to defer to those advisory opinions.

> points in [redacted] direction. [] Wimmer walks towards him and places his right hand on [redacted] upper left arm and his left hand near [redacted] chest. [] Wimmer backs [redacted] up a few steps and then releases him. [] Wimmer walks away and you can't see him in the video anymore. [redacted] then leaves the weight room and goes to the locker room while being escorted by [] Wimmer. After getting dressed [redacted] goes to the Dean's office and meets with Mr. Miller.

Id. at 164. Then, in October of 2018, while this action was pending, Segall exchanged a series of emails with Wimmer, in which Wimmer confirmed that his unpaid suspension was for the September 13, 2016 incident that was described in the Fishers Police report. *Id.* at 165-68. Specifically, Wimmer stated: "The 1-week suspension was for this same incident. There were not 2 incidents as you have inaccurately insinuated in your reporting. I was initially given a paid leave which converted to unpaid leave after investigation [sic] was complete." *Id*. at 167. WTHR acknowledges that the receipt of the Fishers Police report and Wimmer's October 2018 statement "strongly suggest that the September 13 incident" resulted in Wimmer's suspension. *Appellant's Br.* at 29. We recognize that HSE's responses do not provide the level of detail about the incident that the police report and Wimmer's subsequent confirmation that he was suspended for that conduct do. Nevertheless, HSE's responses 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. Based on the foregoing, we cannot say that the

trial court was incorrect in concluding that HSE provided a sufficient factual basis to WTHR. The trial court properly denied WTHR's motion to compel.

[35] As our Supreme Court has stated: "We acknowledge the importance of an open government, as well as the broad access granted to government records by APRA. *See* Ind. Code § 5-14-3-1. However, the job of this Court is to interpret, not legislate, the statutes before it." *ESPN, Inc.*, 62 N.E.3d at 1200. Given the policy considerations that arise under APRA and the many public agencies who receive requests for public records from a public employee's personnel file, the General Assembly may wish to consider adding a statutory definition of factual basis and to specify the precise manner by which a public agency complies with its obligation to provide the information described in clauses (A) through (C) of the personnel file exception.

[36] Affirmed.

Bradford, C.J., and May, J., concur.