



STATE OF INDIANA

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February 21, 2011

Ms. Christina Sepiol
9529 Walnut Drive
Munster, IN 46321

Re: Formal Complaint 11-FC-33; Alleged Violation of the Access to Public Records Act by the West Lake Special Education Cooperative

Dear Ms. Sepiol:

This advisory opinion is in response to your formal complaint alleging the West Lake Special Education Cooperative ("West Lake") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* A copy of West Lake's response is enclosed for your reference.

BACKGROUND

In your complaint, you allege that on January 12, 2011, you submitted a records request to West Lake for numerous documents "for the purpose to prepare [sic] for a Due Process hearing with the Indiana Department of Education, currently scheduled for February 7-11, 2011." Attached to your complaint was a copy of the records request you made to West Lake. In your request you sought "any and all information available, including but not limited to written and computerized statistical information and dates of when the documents were created, for the last three years." Four of the ten enumerated requests were information relating to West Lake's *My Reading Coach* system, with the remaining six relating to trainings and education of West Lake staff. You argue that a reasonable period of time has lapsed since your January 12, 2011 request, and that such delay, particularly with the delay in the disclosure of the identity of West Lake's insurance carrier, is an effort of West Lake to "thwart your efforts to prepare for your hearing on February 7-11."

In response to your complaint, attorney Monica J. Conrad states that West Lake acknowledged your request and sent you an initial response on January 12, 2011. In that response, Ms. Conrad advised that Joan Machuca, Director of West Lake, was currently out on a scheduled visit with your son, and as such, West Lake "intends to wait for her return to identify the status of your requested documents and then respond to your request

by the January 19th deadline pursuant to the Access to Public Records Act.” Ms. Conrad contends that you were aware of Ms. Machuca’s absence when you made your request because Ms. Machuca’s visit with your son had been noticed in advance pursuant to an order by an administrative law judge. On January 19, 2011 Ms. Conrad sent you another response advising that “although your request lacked particularity, West Lake will be producing available records in a reasonable timeframe, on or before February 11, 2011.” Ms. Conrad stated that West Lake would begin gathering information and estimated the February date of production because “the requested information may be . . . located in storage, not readily retrievable or attorney-client privileged.” Ms. Conrad further contends that due to the time it would take to respond to your request, she suggested your making a formal discovery request instead.

Ms. Conrad adds that West Lake initially responded to your request within the seven (7) days as required by the APRA. She argues that under the circumstances, West Lake responded to your request in a reasonable time frame. She stated that West Lake needed to “not only identify the location of the requested records, but also needed to ensure that the documents did not contain non-disclosable information.” Ms. Conrad further avers that your request for the insurance carrier’s name for West Lake required investigation for the document relating to such request may include other information protected under the attorney-client privilege. Ms. Conrad stated that on February 9, 2011, West Lake produced records relating to items 1, 4, 5, 6, 7, 8 and 10 in your request. Ms. Conrad contends that West Lake does not maintain records response to items 2, 3, and 9 of your request.

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.” I.C. § 5-14-3-1. West Lake is a public agency for the purposes of the APRA. I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy West Lake’s public records during regular business hours unless the records are excepted from disclosure as confidential or nondisclosable under the APRA. I.C. § 5-14-3-3(a).

A request for records may be oral or written. I.C. §5-14-3-3(a); §5-14-3-9(c). If the request is delivered by mail or facsimile and the agency does not respond to the request within seven (7) days of receipt, the request is deemed denied. I.C. §5-14-3-9(b). If the request is delivered in person and the agency does not respond within 24 hours, the request is deemed denied. I.C. §5-14-3-9(a). A response from the public agency could be an acknowledgement that the request has been received and information regarding how or when the agency intends to comply. It appears that West Lake initially responded to your request on January 12th, which is within the seven-day period that the APRA prescribes for responding to written requests. If West Lake failed to respond to your facsimiled request within seven days of receiving it, the APRA deems your request denied. That said, West Lake responded to you on January 12th and informed you at that time that the

agency would locate responsive records and provide you with disclosable information on or before February 9, 2011.

The issue here is whether West Lake violated the APRA by failing to actually produce responsive records between the date of your request, January 12th, and the date of your complaint, January 20, 2011. The APRA provides no firm deadlines for the production of public records. The public access counselor has stated repeatedly that records must be produced within a reasonable period of time, based on the facts and circumstances. Considering factors such as the nature of the requests (whether they are broad or narrow), how old the records are, and whether the records must be reviewed and edited to delete nondisclosable material is necessary to determine whether the agency has produced records within a reasonable timeframe. The ultimate burden lies with the public agency to show the time period for producing documents is reasonable. *Opinion of the Public Access Counselor 02-FC-45*.

Here, Ms. Conrad cites to the nature of your requests, particularly the fact that some documents may have had to be retrieved from storage, or properly redacted to prevent disclosure of confidential information. In addition, Ms. Conrad contends that West Lake response was timely in light of West Lake's duties towards its students, its preparation for other administrative hearings (as well as yours), and a snow emergency between February 1 and February 7, 2011. Under such circumstances, it is my opinion that West Lake has not acted unreasonably. Under the APRA, a public agency shall "regulate any material interference with the regular discharge of the functions or duties of the public agency or public employees." I.C. § 5-14-3-7(a). *See also Op. of the Public Access Counselor 09-FC-115* (two months was not an unreasonable production time where agency director and records request handler recently assumed the duties of another position and needed time to review and redact confidential information); *Op. of the Public Access Counselor 04-FC-81* (not unreasonable for agency to take two months to produce personnel records and policies where other staffing changes occurred at the agency and responding employee was new to the position); *see also Op. of the Public Access Counselor 07-FC-327* (three months was not an unreasonable amount of time to respond to seven requests with approximately 1000 pages of responsive documents; 34 days was not unreasonable amount of time to produce three-page document considering number of other pending requests).

CONCLUSION

For the foregoing reasons, it is my opinion that West Lake did not violate the APRA.

Best regards,



Andrew J. Kossack
Public Access Counselor

cc: Monica J. Conrad