

October 10, 2006

Leslie L. Douglass  
4160 W. 1000 N.  
Markle, IN 46770

*Re: Formal Complaint 06-FC-158; Alleged Violation of the Access to Public Records Act by the Northern Wells Community School Corporation*

Dear Ms. Douglass:

This is in response to your formal complaint alleging that the Northern Wells Community School Corporation (“School”) violated the Access to Public Records Act by failing to provide the training materials from an April 2006 executive session. I find that the School did not cite the specific exemption that applied to the training materials when it denied the records, but otherwise could withhold the records.

#### BACKGROUND

You filed your formal complaint after receiving from the School a written denial of your request for a copy of the training materials presented during an executive session of the School Board on April 11, 2006. The executive session was held for the purpose of training school board members with an outside consultant about the performance of the role of the members as public officials. The September 4 denial letter from School Superintendent Gina Berridge denied your request with the following statement: “as shown in the minutes of the executive session, the board met with an outside consultant to train school board members of a technical and legal matter. Nothing else was discussed. Executive session meetings are closed to the public, per board policy 0167.2, so your request for materials and subject matter is of a confidential nature and will not be shared.”

In your formal complaint, you question the discrepancy between the stated purpose of the executive session in the notice and that put forth in the September 4 denial letter. You also take issue with the right to inspect the materials presented by the law firm, which had served as the outside consultant to the school board. You questioned what the actual subject matter was and

why Mr. John Bloom, the School's attorney, was receiving a carbon copy of the denial letter. Finally, you question why the training materials would be considered confidential and restricted from the public.

I sent a copy of your complaint to the School. Mr. John Bloom provided the School's response, which I attach to this advisory opinion for your reference. Mr. Bloom reiterated that the purpose of the April 11 executive session was for the purpose of training school board members about the performance of the role of the members as public officials, which is authorized by Ind. Code 5-14-1.5-6.1(b)(11). Mr. Bloom confirmed that the outside consultant was Jeff Qualkinbush of Barnes & Thornburg LLP, a law firm. In addition, Mr. Bloom stated that the records concerning the training are exempt under Ind. Code 5-14-3-4(b)(12) because they were prepared for discussion or developed for discussion in an executive session, and did not contain information from personnel files. Hence, the School did not violate the access laws in denying the training materials.

### ANALYSIS

Any person may inspect and copy the public records of any public agency, except as provided in section 4 of the Access to Public Records Act ("APRA"). Ind. Code 5-14-3-3(a). If a public agency receives a request for a record via U.S. Mail or facsimile, the public agency is required to respond within seven calendar days, or the request is deemed denied. IC 5-14-3-9(b). If a request is made orally, either in person or by telephone, a public agency may deny the request orally. IC 5-14-3-9(c). However, if a request initially is made in writing, or if an oral request that has been denied is renewed in writing or by facsimile, a public agency may deny the request for a record if the denial is in writing and states the exemption or exemptions authorizing the public agency to withhold the record, and the name and title or position of the person responsible for the denial. IC 5-14-3-9(c).

One exception to disclosure in section 4 of the APRA is for records specifically prepared for discussion or developed during discussion in an executive session under Indiana Code 5-14-1.5-6.1. IC 5-14-3-4(b)(12). However, this exemption does not apply to that information required to be available for inspection and copying under IC 5-14-3-4(b)(8). *Id.* Information required to be available for inspection and copying under IC 5-14-3-4(b)(8) is certain information from the personnel file of a public employee. The exemption in section 4(b)(12) allows the public agency to withhold the records in the public agency's discretion. Hence, the exemption does not make such materials confidential. Confidential records *may not* be disclosed. *See* IC 5-14-3-4(a).

Mr. Bloom states that the training materials you seek were prepared specifically for discussion or developed during discussion in an executive session held on April 11. Mr. Bloom also avers that the training materials did not include any of the personnel file information that must be disclosed under IC 5-14-3-4(b)(8). To validate the exclusion of the training materials, Mr. Bloom also avers that the executive session of April 11 was properly held under IC 5-14-1.5-6.1(b)(11).

A public agency bears the burden of showing that a record fits one of the exceptions under IC 5-14-3-4. IC 5-14-3-1. Based on the allegations of the School, I do not find any violation of the Access to Public Records Act in the denial of the training materials, except in one important respect. The School's denial letter of September 4 which you provided to me did not contain the specific exemption that authorized the withholding of the training materials. Citing board policy 0167.2, which allows for executive sessions in conformance with IC 5-14-1.5-6.1, was not sufficient to state the exemption at IC 5-14-3-4(b)(12) for materials specifically prepared for discussion in an executive session.

Although the September 4 letter was deficient under section 9(c) of the APRA, I do not find any violation of the APRA for the School to have stated in its denial letter that the board met with an outside consultant to train school board members of a technical and legal matter. Since the School Board's notice of the executive session stated the correct language of the executive session purpose, the September 4 letter did not vitiate that notice. Nor do I find that the disparate language raises questions about the propriety of the executive session of April 11 or the denial of records. The training of a technical or legal matter is not inconsistent with a training of School Board members on their role as public officials. Still, as I stated above, the School should have cited IC 5-14-3-4(b)(12) as the reason it was withholding the training materials.

Finally, you raise a question about why Mr. Bloom received a carbon copy of the denial letter of September 4. This does not raise a question under the access laws; therefore, I decline to offer any opinion about the matter.

#### CONCLUSION

For the foregoing reasons, I find that the Northern Wells Community School Corporation did not comply with the Access to Public Records Act in its denial of the training materials because the denial letter of September 4 did not contain a specific citation to the exemption that applies to the records. However, the School's belated response to your complaint sufficiently explains its continued denial of the records.

Sincerely,

Karen Davis  
Public Access Counselor

cc: John Bloom