

April 10, 2006

Tim Morgan
4606 Tamarack Drive
Fort Wayne, IN 46835

Re: Formal Complaint 06-FC-51; Alleged Violation of the Access to Public Records Act by the Fort Wayne Community Schools

Dear Mr. Morgan:

This is in response to your formal complaint alleging that the Fort Wayne Community Schools ("School") violated the Access to Public Records Act by refusing to provide a copy of the minutes of a meeting and refusing you an electronic copy of a record. I find that the School should have provided the records.

BACKGROUND

You filed your formal complaint on March 10, 2006 in two parts. In the first part, you complain that the School refused to provide an electronic copy of the minutes of the March 6 meeting of the Board of School Trustees ("Board"). You state that the School denied you this record because the minutes had not yet been approved at the next meeting of the Board. The School directed you to the School website that would contain the minutes, once they are approved by the Board. You provided a copy of an e-mail message from Ms. Debbie Morgan, PIO for the School, in which she stated that the minutes are available to the public after they have been approved by the Board. Until then, Ms. Morgan stated, the minutes are intra-agency advisory material containing expressions of opinion communicated for the purpose of decision-making under Indiana Code 5-14-3-4(b)(6).

In the second part of your complaint, you contend that the School refused to provide you with an electronic copy of the "state of the school" which was a presentation given by Wendy Robinson, Superintendent of the School, to the Board. You provided e-mail correspondence showing that Ms. Morgan told you on February 16 that the record "is not available in an electronic version." You sent her a message on February 24 challenging that statement, because

you believed that this document must have been prepared using a standard word processor that would have stored the document on a computer.

I sent a copy of your complaint to the School. Ms. Morgan responded by letter, a copy of which I have enclosed for your reference. Ms. Morgan states that with respect to meeting minutes, they are protected under the deliberative materials exception that was cited to you. With respect to the State of the School address, she stated that you have been provided with an electronic copy of the address, although she does not explain when she sent you the record.

ANALYSIS

Any person may inspect and copy the public records of any public agency during the agency's regular business hours, except as provided in section 4 of the Access to Public Records Act ("APRA"). Ind. Code 5-14-3-3(a). "Public record" means any material that is created, received, retained, maintained, or filed by or with a public agency, and includes electronically stored data or any other material regardless of form or characteristics. *See* IC 5-14-3-2(m). Hence, electronic mail is a public record as that term is defined in the Access to Public Records Act. "Copy" includes duplicating electronically stored data onto a disk, or any other medium of electronic data storage, or reproducing by any other means. *See* IC 5-14-3-2(b).

A public agency may, in its discretion, withhold certain types of records. Records that are intra-agency or inter-agency advisory or deliberative material, including material developed by a private contractor under a contract with a public agency, that are expressions of opinion or are of a speculative nature, and that are communicated for the purpose of decision making, may be withheld. IC 5-14-3-4(b)(6).

Minutes or memoranda from a public meeting, even in draft form, do not fit the definition of "advisory or deliberative material that are expressions of opinion." Draft minutes are statements of what transpired at a public meeting. This office has stated many times that such draft minutes are not exempt from disclosure. The minutes may not be denied merely because they have not been approved by the Board. The refusal to provide you with an electronic copy of unapproved minutes constituted a denial of access in violation of the Access to Public Records Act.

It appears that you were also denied an electronic version of the State of the School address by virtue of the message on February 16. Because you have now been provided the electronic copy of the address, the record was maintained by the School on February 16, three days after the address was presented to the Board. It is not clear upon what basis the School stated on February 16 that the record was "not available in an electronic version." In any event, you were entitled to a copy of the "electronically stored" data via any means of reproducing the record. The School states that you have been given this record.

CONCLUSION

For the foregoing reasons, it is my opinion that the Fort Wayne Community Schools has violated the Access to Public Records Act by denying you draft meeting minutes and by initially denying you an electronic version of the State of the School address.

Sincerely,

Karen Davis
Public Access Counselor

cc: Debbie Morgan