

May 15, 2006

Martin I. Hensley
15 Wood Street
Greenfield, IN 46140

Re: Formal Complaint 06-FC-70; Violation of the Access to Public Records Act by the Greenfield Community School Corporation

Dear Mr. Hensley:

This is in response to your formal complaint alleging that the Greenfield Community School Corporation ("School") violated the Access to Public Records Act by destroying the electronic mail of its employees. I find that the School must retain certain records including e-mail, but that you have not demonstrated that the School has failed to retain e-mail.

BACKGROUND

You filed a formal complaint with the Office of the Public Access Counselor on April 13, 2006. It is your contention that on April 10, 2006, you became aware that not all e-mail sent or received by School employee Matt Vance was retained, since the School disclosed only 10 of his e-mails compared with 1,000 e-mails of Steve Bryant. You claim that the School told you the reason for the disparity is that School corporation e-mails were allowed to be deleted to save space on the server, which has limited capacity. You also include documentation showing that the School was moving from storage of e-mail on the School e-mail server to a different server.

I sent a copy of your complaint to the School. Superintendent Linda Gellert sent a response to your complaint. I have enclosed a copy of her response for your reference. Dr. Gellert explained that the school system receives 8,000-10,000 e-mails daily. Much of those e-mails are "junk" e-mail that is not related to school business. Staff in the past has dealt with the retention of these e-mails differently, some retaining all e-mail and others routinely cleaning out the e-mail that does not have to be retained.

Dr. Gellert disputes the inferences you draw from the School's movement to storage of e-mail on a School server from storage on a dedicated e-mail server. She stated that the H: drive is a different server than the more limited-capacity e-mail server. There was no effort on the part of the School to deprive you of any public record, nor does the storage of e-mails on the School server result in removal of e-mail. As for Mr. Vance in particular, Dr. Gellert interviewed him and learned that the nature of his job is such that he frequently communicates without using e-mail; hence, he generates fewer messages than would a school principal.

ANALYSIS

Any person may 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 the Access to Public Records Act. Ind. Code 5-14-3-3(a). A public agency shall protect public records from loss, alteration, mutilation, or destruction. IC 5-14-3-7(a). Notwithstanding IC 5-14-3-7, public records subject to Indiana Code 5-15 may be destroyed only in accordance with record retention schedules under Indiana Code 5-15. IC 5-14-3-4(e). Public records not subject to Indiana Code 5-15 may be destroyed in the ordinary course of business. IC 5-14-3-4(e).

Under IC 5-15, “record,” in relevant part, means all documentation of the informational, communicative or decisionmaking processes of state government, its agencies and subdivisions made or received by any agency of state government or its employees in connection with the transaction of public business or government functions, which documentation is created, received, retained, maintained, or filed by that agency or its successors as evidence of its activities or because of the informational value of the data in the documentation. IC 5-15-5.1-1 (defining “record”). This definition is made applicable to records of local government pursuant to IC 5-15-6-1.5. “Local government” means a political subdivision (as defined in IC 36-1-2-13). IC 5-15-6-1.4. “Political subdivision” means municipal corporation or special taxing district, IC 36-1-2-13, and “municipal corporation” includes a school corporation. *See* IC 36-1-2-10. Accordingly, the records of a school corporation are subject to IC 5-15.

Electronic mail is a public record, and to the extent that a particular e-mail meets the definition of “record,” may not be destroyed except in accordance with record retention schedules. On the other hand, some e-mail does not contain documentation of the informational, communicative or decisionmaking processes of a school corporation, and therefore may be destroyed in the ordinary course of business. IC 5-14-3-4(e). Hence, some e-mails of the school corporation’s employees are subject to a retention schedule, and others are not. Your concern about e-mail destruction as set out in your complaint relies on the small number of e-mails retained by one employee relative to that of a school principal, and the implementation of a new method for storing e-mail. In my opinion, Dr. Gellert’s detailed response to your complaint answers your bare allegations concerning the number of Matt Vance’s e-mails and the implementation of a different storage method for School e-mail. Dr. Gellert has also averred that the School does not have a system that indiscriminately discards e-mail. I do not find any violation of the Access to Public Records Act as you allege.

CONCLUSION

For the foregoing reasons, I decline to find that the Greenfield Community School Corporation has destroyed records in violation of the Access to Public Records Act.

Sincerely,

Karen Davis
Public Access Counselor

cc: Dr. Linda Gellert