

July 17, 2006

Timothy R. Morgan  
4606 Tamarack  
Fort Wayne, IN 46835

*Re: Formal Complaint 06-FC-97; 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 failing to deny any records within 24 hours and by denying disclosable records.

#### BACKGROUND

You hand-delivered to the School on March 31 a 21-part request for records. In your letter, you asked for paper and electronic versions of all listed items. You closed your letter by stating that "all of the above information should be readily available for inspection...after review, I will submit a listing of the information I wanted to be copied."

You enclosed in your formal complaint a copy of an e-mail string. On May 17, Ms. Debbie Morgan, PIO of the School, stated that she had materials for you to review in response to your March 31, 2006 request. You returned a message that stated you would come to the School the next day to begin your review. You also asked that Ms. Morgan provide you with "how electronic data will be transferred," and a "status of the 21 items" listed in your letter.

Ms. Morgan indicated that there is no electronic data to transfer. Only one of the 21 items is exempt; item numbered 12 is denied under "IC 5-14-3-4a (8)" (sic).

You filed your formal complaint with my office, in twelve parts. Ms. Morgan provided a response after I sent her a copy of the complaint. A copy of her response is enclosed for your

reference. I have set out the elements of your complaint and her response to each part of your complaint below.

## 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). A public agency that receives a request for a record via hand-delivery is required to respond to the request within 24 hours, or the request is deemed denied. IC 5-14-3-9(a). A response may be an acknowledgement that the agency received the request, and some indication of when and how the agency intends to comply. There are no set timeframes in the APRA regarding when a record must be provided. Therefore, I have stated that an agency should supply the record within a period of time that is reasonable.

A public agency may deny a written request for a record if the denial is in writing and the denial includes a statement of the specific exemption or exemptions authorizing the withholding of all or part of the public record and the name and the title or position of the person responsible for the denial. IC 5-14-3-9(c). A public agency that maintains records in an electronic data storage system shall make reasonable efforts to provide to a person making a request a copy of all disclosable data contained in the records if the medium requested is compatible with the agency’s data storage system. IC 5-14-3-3(d).

### *Response and Production Time*

You set out a two-part complaint that applies to all the requests. First, you contend that the time within which to supply the records was excessive—over 45 days from the date of your request. Second, you allege that the School was required to issue a denial of the records within 24 hours; the School’s response only acknowledging receipt of the request was insufficient.

Ms. Morgan’s response to your first contention is that the delay was attributable to the tremendous amount of material you had requested, short staffing in all of the departments through which she needed to work to obtain the information, and the fact that her department is managed only by her. Among several of the 21-part requests are requests for records going back four years; many were for multiple years. Other requests were broad, including one request for “documentation of how the district tracks individuals with depression. Although the response to some of your requests was that no documentation exists, the School still must determine whether documentation exists, and that search takes time. I find that the time within which your multi-part requests were reviewed and compiled was reasonable under the circumstances.

Also, Ms. Morgan is correct in asserting to your second contention that the law does not require her to deny the individual requests within 24 hours. As I observed above, often a public agency must locate responsive documents and review them before the public agency can determine whether it has a basis upon which the agency can deny a record. This appears to be the case with your manifold request of March 31. No denial of access occurred from the 48 day time to produce disclosable records, to determine that some records do not exist, and to deny other records.

I now proceed to analyze your specific complaints.

*Request for Financial Data to Board*

You made request #2 for all financial data provided to the School elected board members over the last year, including electronic data. The School stated that no documents responsive to this request exist. Ms. Morgan's response to the complaint reiterated her claim that no records exist. You claim that this denial is nonsensical because the board reviews and approves vouchers once a month and annually approves the budget, making the same claim for the electronic version of the financial data.

Your request for "all financial data provided to the [school board] over the last year" appears fairly clear, but may not be "reasonably particular." See IC 5-14-3-3(a). Ms. Morgan does not protest that your request is not stated with reasonable particularity, but her denial may suggest that she is not sure what specific records you seek. The public agency that receives a request that is not reasonably particular should seek clarification from the requester rather than outright deny the record. I would suggest that you be more explicit with respect to this request. Your complaint with respect to request #2 makes your request more explicit, in that you assert that the vouchers and budget are among the items you requested on March 31. The School should disclose these to you or state why they are exempt.

*All Financial Data to Support the Geyer Conversion*

You claim here that the School disclosed only the initial Geyer Budget, omitting quotes and building renovations which make up the Geyer School conversion. Ms. Morgan asserts that no other documents are responsive to your request. Again, assuming that Ms. Morgan understands more precisely what you are requesting, the School should produce the more specific records that are stated in your complaint, paragraph 4. If the School does not maintain any additional responsive records, however, the School is under no obligation to create any records to satisfy your request.

*The Salary for Ms. Trout*

You claim that the request #8, which included the salary for Ms. Trout's position, was omitted from the document production. Ms. Morgan denies this, stating that she did provide this. If the record was provided to you in the "Personnel Report of September 8, 2003 meeting," which was among the list of documents provided, then the School did not deny you the record. I am immediately suspicious whether a personnel report presented in 2003 would contain current salary information, however. I recommend that the School ascertain whether the Personnel Report provided is the most responsive record that the School maintains, and I recommend that the School provide the most recent information, as required by IC 5-14-3-4(b)(8).

### *Time Phase Expulsions and Suspensions by Month*

You received an annual report containing the data, but you had requested a report by month as well as year. Ms. Morgan asserts that the monthly data is not available. Ms. Morgan does not explain whether the data is stored in such a way that the report can be aggregated by month, in response to your complaint that claims that the information is stored in a database that permits multiple reporting formats. In addition, you have requested the data electronically, from which you could manipulate the data if you possess the software. Assuming that the data is in a medium that is compatible with the medium that you have requested, the School should make reasonable efforts to provide you with the data.

### *Daily Time Attendance Report of Deborah Morgan*

You requested Ms. Morgan's daily time sheet for January February, and March, 2006. Ms. Morgan claims that this information is exempt under the personnel file exemption. This was the exemption that Ms. Morgan claimed in her May 18 message to you, although the citation was misstated as IC 5-14-3-4a(8). Under IC 5-14-3-4(b)(8), certain information from a personnel file of a public employee is required to be disclosed:

- (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.

The daily attendance sheets, if maintained in the personnel file, are not included among the information that must be disclosed from a personnel file. Therefore, the School's denial of this record was not improper if the record is so maintained. I note that your request for the attendance sheet may have been fatal to your retrieval of this information, but you may be more successful if you request information of a financial nature that is not maintained in a personnel file, such as a pay stub.

### *Draft Minutes*

Your complaint about the March 27 meeting minutes of the Board appears to be that you did not receive the Microsoft Word document that was created. Ms. Morgan's complaint response, that the draft minutes were not completed until just before the following Board meeting when they were approved, addresses only the time within which she produced the minutes, not the failure to provide the minutes as an electronic document. The APRA requires that the School make reasonable efforts to provide an electronic version of the record if the medium requested is compatible with the School's data storage system.

In response to your complaints that the School generally failed to provide the documents requested in electronic format as well as paper records, Ms. Morgan states only that you did not request this. Yet, your written request clearly states that you were asking for the paper and electronic version of the records. This statement is somewhat modified by your closing paragraph in which you state that you will inspect the paper records first and tell the School which records to copy. Also, your May 17 e-mail message to the School asks “how electronic data will be transferred.”

Under the APRA, the requester should indicate to the public agency how the requester would like to receive electronic data. See IC 5-14-3-3(d)(“if the medium *requested* is compatible with the agency’s data storage system”). It is not the public agency’s burden to propose how electronic data may be transferred. Nevertheless, the School indicated that “there is no electronic data to transfer.” If this means that the records do not exist in electronic format, that statement may not be accurate, since few records are created utilizing solely pen and paper. If the School intended to state that you had not indicated how you wished to receive electronic data, I recommend that you propose how the electronic data may be copied for you; i.e., on compact disk; as attachments to e-mail, etc.

#### CONCLUSION

For the foregoing reasons, I find that the Fort Wayne Community Schools should work with you to identify responsive records utilizing your complaint response as statements of more specificity, and to make reasonable efforts to provide any and all electronic data in the format that you specify, if the medium you request is compatible with the School’s data storage system.

Sincerely,

Karen Davis  
Public Access Counselor

cc: Deborah Morgan