

March 4, 2008

Andrew Manna
2700 First Indiana Plaza
135 North Pennsylvania
Indianapolis, Indiana 46204

Re: Formal Complaint 08-FC-69; Alleged Violation of the Access to Public Records Act by Ohio Valley Opportunities, Inc.

Dear Mr. Manna:

This advisory opinion is in response to your formal complaint alleging Ohio Valley Opportunities Inc ("OVO") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by denying you access to records. It is my opinion OVO is a public agency for the purposes of the APRA and is therefore required to produce the records you requested

BACKGROUND

You submitted a request for access to records maintained by OVO by letter dated February 25, 2008. Specifically, you requested records from an individual's personnel file. You received an electronic mail message from Pat Speer of OVO dated February 26, denying your request on the basis that OVO is a non-profit corporation not subject to the APRA. You filed this complaint on February 27. You alleged priority status under 62 IAC 1-1-3, claiming you require the records for a proceeding before another public agency at the end of March. Priority status has been granted.

I sent a copy of your complaint to OVO with an invitation for OVO to submit a response, but I have not received a response to the complaint.

ANALYSIS

The public policy of the APRA states, "(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.

The question here is whether OVO is a public agency for the purposes of the APRA. If it is, any person has the right to inspect and copy the public records of OVO during regular business hours unless the public records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. I.C. § 5-14-3-3(a).

You addressed the letter to “OVO Project Head Start.” The entity is listed at the Indiana Secretary of State’s office as Ohio Valley Opportunities Inc. It has not filed an assumed business name containing the words “Head Start.” It is my understanding, though, that OVO operates a Head Start project. For the purposes of the APRA, a public agency is, among other things, any entity or office subject to budget review by the State Board of Accounts. I.C. § 5-14-3-2(1)(3). This is a determination made not by this office but by the State Board of Accounts (“Board”), pursuant to state statute. My office contacted the Board to inquire about OVO’s audit status. Tammy Baker of the Board indicated that while Head Start programs generally do not report to the Board, OVO operates the Head Start program in question. Further, OVO and its subsidiaries filed E-1 reports with the Board and were required to submit audits to the Board for the past several years.

Based on this information, it is my opinion that OVO is subject to audit by the Board and is therefore subject to the APRA, pursuant to I.C. § 5-14-3-2(1)(3). The records you requested, certain personnel file records, are required to be disclosed by an agency or office subject to the APRA. I.C. § 5-14-3-4(b)(8).

CONCLUSION

For the foregoing reasons, it is my opinion the OVO is required to produce the records you requested because it is an agency or office subject to audit by the State Board of Accounts and therefore a public agency for purposes of the APRA.

Best regards,



Heather Willis Neal
Public Access Counselor

cc: Pat Speer and Deb Myers, Ohio Valley Opportunities Inc.