



# STATE OF INDIANA

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November 20, 2009

Mr. Brian D. Sloneker  
150 Iris Ave.  
Indianapolis, IN 46241

*Re: Formal Complaint 09-FC-245; Alleged Violation of the Access to Public Records Act by the Turkey Run School Corporation*

Dear Mr. Sloneker:

This advisory opinion is in response to your formal complaint alleging the Turkey Run School Corporation ("TRSC") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* For the following reasons, my opinion is that TRSC did not violate the APRA.

## BACKGROUND

In your complaint, you allege that TRSC violated the APRA by denying you access to emails sent by a TRSC guidance counselor Kelly Ferguson from her TRSC desktop and laptop computers. You allege that you need the emails to discredit her allegations, show her promiscuous behavior and history, and validate the lack of moral compass" because the guidance counselor has filed for a protective order against you. You state that Gary Hanner of TRSC denied your request and informed you that TRSC would not release the information before the court date for the protective order.

My office forwarded a copy of your complaint to TRSC. Mr. Hanner's response on behalf of TRSC is enclosed for your review. Mr. Hanner states that your request relates to a request that TRSC provide you with printed copies of all outbound/sent messages from Ms. Ferguson's laptop and desktop computers on her email from September 11, 2008, through October 1, 2009. Mr. Hanner states that TRSC informed you that an *ex parte* order of protection pursuant to Indiana Code section 34-26-5-9(b) was pending in the Parke Circuit Court. A hearing was set before that court and TRSC did not want to violate the protective order before the hearing. TRSC sent you an email stating that it declined to provide access to the emails until the court ruled on the motion for protective order. TRSC also advised you that there were some four thousand five hundred (4,500) emails, and that even if the court ruled that it was not a violation of the protective order to provide the emails, it would require the review and deletion of any

identifying information of the emails prior to providing copies to you. You then requested a continuance of the protective order hearing. TRSC states that it remains in the position of awaiting the court's decision before releasing information that -- in its view -- might violate the protective order.

## 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. TRSC does not dispute that it constitutes a public agency for the purposes of the APRA. I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy TRSC's public records 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).

I note that the circumstances of this complaint are similar to a complaint you previously filed in late 2008 insofar as the public agency did not provide you with public records while a motion for protective order was pending. *See Opinion of the Public Access Counselor 08-FC-245*. In an advisory opinion in response to that complaint, Counselor Neal advised the following:

Here, CCS has asked a court to weigh in on the issue of disclosure of the records. At this point, it is my opinion it is not unreasonable for CCS to await the court's decision before proceeding.

Should CCS deny you access to the records after receiving the court's decision and should you believe the denial to be in violation of the APRA, you may file an additional complaint with this office. I decline to issue an opinion today, though, regarding the substantive issue of whether the records in question should be disclosed since that is not the issue presented in the complaint and since the matter is pending before a court.

*Id.* I agree with Counselor Neal's opinion and apply the same reasoning in this matter. In my opinion, it was not unreasonable for TRSC to await the court's decision before determining whether or not to disclose the records to you.

CONCLUSION

For the foregoing reasons, it is my opinion that TRSC did not violate the APRA.

Best regards,

A handwritten signature in black ink that reads "Andrew J. Kossack". The signature is written in a cursive, slightly slanted style.

Andrew J. Kossack  
Public Access Counselor

cc: Gary G. Hanner, Hanner, Hanner & Hanner