



# STATE OF INDIANA

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June 1, 2010

Mr. Raymond D. Gilbrech  
Senior Organizer  
IN/KY Regional Council of Carpenters  
322 West Main Street  
Westfield, IN 46074

*Re: Formal Complaint 10-FC-107; Alleged Violation of the Access to  
Public Records Act by the Westfield Washington School District*

Dear Mr. Gilbrech:

This advisory opinion is in response to your formal complaint alleging that the Westfield Washington School District (the "District") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.*, by denying you access to public records.

## BACKGROUND

In your complaint, you allege that you submitted a written request for a list of all subcontractors used on a project for the District. You claim the District did not respond to that request. My office forwarded a copy of your complaint to the District. As of today, we have not received a response.

## 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 District is a public agency for the purposes of the APRA. I.C. § 5-14-3-2(m). Accordingly, any person has the right to inspect and copy the District'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).

A request for access to public records may be oral or written. I.C. §5-14-3-3(a); §5-14-3-9(c). If the request is delivered by mail or facsimile and the agency does not respond to the request within seven (7) days of receipt, the request is deemed denied. I.C. §5-14-3-9(b). If the request is delivered in person and the agency does not respond within twenty-four (24) hours, the request is deemed denied. I.C. §5-14-3-9(a). A response from the public agency could be an acknowledgement that the request has been received and information regarding how or when the agency intends to comply. If a request is made orally, either in person or by telephone, a public agency may deny the request orally. IC 5-14-3-9(c). When the request is made in writing and the agency denies the request, the agency must deny the request in writing and must include a statement of the specific exemption or exemptions authorizing the withholding of all or part of the record and the name and title or position of the person responsible for the denial. I.C. § 5-14-3-9(c).

Here, it is unclear to me why the District failed to respond to your request. Under the APRA, a public agency that withholds a public record bears the burden of showing that the record is exempt. I.C. §§ 5-14-3-1, 5-14-3-9(f) and (g). Exceptions to disclosure are narrowly construed. I.C. § 5-14-3-1. Because the District has not explained why it denied your request, I cannot find that the District has sustained its burden of proof to withhold the requested records.

I encourage the District to either produce the requested records to you or cite to an applicable exception to the APRA that provides the District with the legal authority to withhold those records. I note that the District is not required to produce records that are non-existent and it need not create a record in response to a request for information. That said, if the records exist and the District persists in its denial of access following the issuance of an advisory opinion from this office, I leave you to your remedies before a court pursuant to Ind. Code § 5-14-3-9(e).

#### CONCLUSION

For the foregoing reasons, it is my opinion that the District has not met its burden of proof under the APRA to sustain a denial of access to the records you requested.

Best regards,



Andrew J. Kossack  
Public Access Counselor

Cc: Westfield Washington Schools