



# STATE OF INDIANA

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July 22, 2010

Mr. Wayne M. O'Hara  
1072 Jackson Branch Rd.  
Nashville, IN 47448

*Re: Formal Complaint 10-FC-149; Alleged Violation of the Access to Public Records Act by the Brown County School Corporation*

Dear Mr. O'Hara:

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

## BACKGROUND

In your complaint, you allege that you requested access to the Schools' "detailed monthly financial reports," but you received no response. You further allege that you requested copies of contracts and correspondence associated with the contracts, but you likewise received no response to that request.

In response to your complaint, the Schools' Dr. Dennis Goldberg states that the Schools did, in fact, send you a response to your June 12th request on June 19th. Dr. Golberg further states that you did not request "detailed monthly financial reports" in your June 12th letter. Moreover, in the June 19th response, Dr. Goldberg referred you to the Indiana Department of Education, which maintains the Schools' complete financial report. With regard to your request for contacts and correspondence, Dr. Goldberg claims that the Schools responded to that request on June 18th. On that date, he states that you visited the Schools' offices and received a number of records from David Bartlett, the director of the Schools' Career Resource Center.

## 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 Schools are a “public agency” under the APRA. I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy the Schools’ public records during regular business hours unless the public records are excepted from disclosure as nondisclosable under the APRA. I.C. § 5-14-3-3(a).

A request for 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 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.

Here, it appears the Schools responded to your written requests within the required seven (7) days. While the APRA does require agencies to *respond* within a certain amount of time, there are no prescribed timeframes when the records must be *physically produced* by a public agency. The public access counselor has stated repeatedly that records must be produced within a reasonable period of time, based on the facts and circumstances. Considering factors such as the nature of the requests (whether they are broad or narrow), how old the records are, and whether the records must be reviewed and edited to delete nondisclosable material is necessary to determine whether the agency has produced records within a reasonable timeframe. The ultimate burden lies with the public agency to show the time period for producing documents is reasonable. *Opinion of the Public Access Counselor 02-FC-45*.

Under the APRA, “[a] request for inspection or copying must: (1) identify with reasonable particularity the record being requested....” I.C. § 5-14-3-3(a). You state that the Schools failed to produce “detailed monthly financial reports,” but I agree that you did not include such a request in your June 12th letter. The Schools did not violate the APRA by failing to produce records that you did not request access to.

Beyond that, your complaint does not indicate which specific documents you believe the Schools have failed to produce, because the Schools have stated that you picked up a large number of records from Mr. Bartlett on June 18th. Because nothing before me indicates that the Schools withheld a record that you specifically requested, in my opinion the Schools have not violated the APRA. That said, if you specifically request records that the Schools maintain, the Schools should provide those records to you unless an exception in section 4 of the APRA permits or requires the Schools to withhold the records. To the extent that an agency fails to grant access to public records following the issuance of an advisory opinion from this office, a complainant’s remedies lie with a court pursuant to Ind. Code § 5-14-3-9(e).

CONCLUSION

For the foregoing reasons, it is my opinion that the Schools have not violated the APRA.

Best regards,

A handwritten signature in black ink that reads "Andrew J. Kossack". The signature is written in a cursive style with a prominent, sweeping flourish at the end of the name.

Andrew J. Kossack  
Public Access Counselor

Cc: Dennis Goldberg