



STATE OF INDIANA

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January 7, 2011

Mr. Cole Randall
8765 St. Rd. 37
Tell City, IN 47586

Re: Formal Complaint 10-FC-310; Alleged Violation of the Access to Public Records Act by the Tell City Troy Township School Corporation

Dear Mr. Randall:

This advisory opinion is in response to your formal complaint alleging the Tell City Township School Corporation ("Schools") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* The School's response is enclosed for your reference.

BACKGROUND

In your complaint, you allege that on September 9, 2010, you requested a list of records from the Schools. On September 14, 2010, Supt. Ron Etienne provided you with several responsive records. However, because in your view those records were vague, you requested additional records on September 23rd. On October 1st, Supt. Etienne responded to that request by informing you that the information you requested was not readily available and that he is only working two days per week. You replied that the format of the information was irrelevant and inquired about receiving responsive information at the October 12th school board meeting. You say that Supt. Etienne stated in response that the information you requested "only exists in his personal hand notes." You renewed your request on November 30th, but had not received a response as of December 6th (the day you filed your formal complaint).¹

¹ Your complaint also includes what appear to be new records requests to the Schools. You state that you "would also request the itemized document referred to by the [Schools] as to the annual cost savings of \$400,000.00 with the closing of the Tell City Junior High School," and "an itemized accounting of the expenditures in account 25400 in the amounts of \$194,548 FY2008 and \$396,894 in FY2009 under the account named Planning, Research, Development. Also expenditures in account 25790 in the amounts of \$520,823 FY2008 and \$699,311 in FY2009 under the account named Personal Services, Other Professional Services." As the Office of the Public Access Counselor is not the custodian of these records, these requests should be made directly to the Schools. The Schools should respond in accordance with the APRA by either denying the requests by citing to an applicable exception to the APRA's disclosure requirements, or by releasing all responsive records for you to inspect and/or copy.

In response to your complaint, Supt. Etienne states that, in response to your requests, he provided you with the Schools bi-annual financial report for 2009-2010, the “Current Bond Issue and Lease Rental Schedule including QZAB Bond Issues,” the bond debt service payments and lease schedule payments for all current outstanding bond issues of the Schools, the schedule of principal and interest payments on the bond issue for the William Tell Elementary School Building Corporation, and a summary of project costs for “various improvement projects undertaken by the [Schools that] started in 2006.” He concedes that he neglected to forward you the Indiana Department of Education Fiscal Financial Report from July 1, 2009, to June 30, 2010, but he did so at the time he responded to your complaint. As to your requests for a reconciliation of building costs and a breakdown of the anticipated savings from the closing of the Tell City Junior High School Building, Supt. Etienne claims that no such records exist.

With respect to the remainder of your requests, Supt. Etienne responds that you have requested information that is not available in any record of the Schools, and that can “only be ascertained, if at all, from a review of numerous documents and a compilation of information from those other documents in order to attempt to arrive at the information which [you] requested.” Supt. Etienne further claims that he “did not know at the time, and frankly, still do not know, what records of the [Schools] need to be examined and evaluated in order to provide [you] with the information which [you] requested in [your] subsequent requests.”

ANALYSIS

The public policy of the APRA states that “(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 for the purposes of 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 records are excepted from disclosure as confidential or nondisclosable under the APRA. I.C. § 5-14-3-3(a).

Under the ARRA, a request for inspection or copying must identify with reasonable particularity the record being requested. I.C. § 5-14-3-3(a). While the term “reasonable particularity” is not defined in the APRA, it has been addressed a number of times by the public access counselor. *See Opinions of the Public Access Counselor 99-FC-21* and *00-FC-15* for two examples. Counselor Hurst addressed this issue in *Opinion of the Public Access Counselor 04-FC-38*:

A request for public records must “identify with reasonable particularity the record being requested.” IC 5-14-3-3(a)(1). While a request for *information* may in many circumstances meet this requirement, when the public agency does not organize or maintain its records in a manner that permits it to readily identify records that are responsive to the request, it is under no obligation to search all of its records for any reference to the information being requested. Moreover, unless otherwise required by law, a public agency is under

no obligation to maintain its records in any particular manner, and it is under no obligation to *create* a record that complies with the requesting party's request.

Opinion of the Public Access Counselor 04-FC-38 (2004), available at <http://www.in.gov/pac/advisory/files/04-FC-38.pdf>. In reviewing your request, it appears that you requested some information and some records. Supt. Etienne responded to your requests by providing several records, but you renewed your request and filed this complaint due to the Schools' failure to provide certain other information. Under the APRA, the Schools are not obligated to create records in response to a request, and they are also not obligated to answer generalized inquiries. Generally, if a public agency has no records (or no additional records beyond what has already been released) responsive to a public records request, the agency does not violate the APRA by denying the request. "[T]he APRA governs access to the public records of a public agency that exist; the failure to produce public records that do not exist or are not maintained by the public agency is not a denial under the APRA." *Opinion of the Public Access Counselor 01-FC-61*; see also *Opinion of the Public Access Counselor 08-FC-113* ("If the records do not exist, certainly the [agency] could not be required to produce a copy....").

However, if you can submit your request for the remaining information with enough particularity that the Schools can readily identify the records responsive to your request, the Schools should release those records to you unless they are confidential or otherwise nondisclosable under the APRA. Previous public access counselors have not required public agencies to search through records -- electronically or manually -- to determine what records might contain information responsive to a request. *Informal Opinion of the Public Access Counselor 08-INF-23*; *Opinion of the Public Access Counselor 04-FC-38*. Thus, the Schools need not search through all of its records for the information you seek, but in response to a reasonably particular request for records containing responsive information, the Schools should release responsive records to you in accordance with the APRA.

CONCLUSION

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

Best regards,



Andrew J. Kossack
Public Access Counselor

cc: Supt. Ron Etienne