



# STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

PUBLIC ACCESS COUNSELOR  
ANDREW J. KOSSACK

Indiana Government Center South  
402 West Washington Street, Room W470  
Indianapolis, Indiana 46204-2745  
Telephone: (317)233-9435  
Fax: (317)233-3091  
1-800-228-6013  
[www.IN.gov/pac](http://www.IN.gov/pac)

January 18, 2011

Mr. Edward Shabaz  
524 W. Chicago Ave.  
East Chicago, IN 46312

*Re: Formal Complaint 10-FC-320; Alleged Violation of the Access to  
Public Records Act by the School City of East Chicago*

Dear Mr. Shabaz:

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

## BACKGROUND

In your complaint, you allege that you requested records from the School on July 23, 2010, and November 12, 2010. As of December 20, 2010, you received no response to those requests. The requests sought contracts for School employees.

Superintendent Michael A. Harding responded to your complaint on behalf of the School. He states that the School sent all responsive contracts to you via certified mail on January 3, 2011. He states that with respect to the July 23rd request, you agreed that the School could delay producing the contracts until all administrative team members were hired for the 2010-2011 school year. The School appointed a majority of the positions in late August of 2010 and completed the process on November 9th. He claims that you agreed in September and October of last year to delay the request until the School completed its appointments. With respect to the November 9th request, Supt. Harding claims that you also agreed to delay receiving those records due to the fact that as of November 15th, the School was still in the process of hiring five administrative positions.

## 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 School does not dispute that it is a “public agency” under the APRA. I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy the School’s 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, there is a factual dispute as to whether or not the School responded to your requests. In your complaint, you claim that the School “ignored” the requests and did not release any responsive records. In Supt. Harding’s response, he claims that you agreed the School could delay producing records until all vacant administrative positions were filled. The public access counselor is not a finder of fact. If the School ignored your request, it acted contrary to section 9 of the APRA. On the other hand, if you informed the School that it was free to withhold the records until all administrative positions were filled, then the School fulfilled its obligations under the APRA by responding to your request and making arrangements to produce the records to you at a later date.

The APRA does not prescribe timeframes for the actual *production* of public records. 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. Section 7 of the APRA requires a public agency to regulate any material interference with the regular discharge of the functions or duties of the public agency or public employees. I.C. §5-14-3-7(a). However, Section 7 does not operate to deny to any person the rights secured by Section 3 of the Access to Public Records Act. I.C. §5-14-3-7(c).

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*. Here, the School claims that you agreed that it could wait to release the contracts until all administrative positions were filled. If that is true, the School acted reasonably under the circumstances. In any event, I understand that the School has now released all responsive records. I trust this resolves your complaint.

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 if the School ignored your requests and failed to respond within seven days, the School violated the APRA. If, however, you agreed to allow the School to withhold responsive records until the School filled all vacant administrative positions, the School did not violate the APRA. The School has now produced all relevant records and has not otherwise 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 large, sweeping initial "A".

Andrew J. Kossack  
Public Access Counselor

Cc: Supt. Michael A. Harding