



STATE OF INDIANA

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May 11, 2010

Mr. Michael C. Wilson
3746 W. 46th St.
Indianapolis, IN 46228

Re: Formal Complaint 10-FC-89; Alleged Violation of the Access to Public Records Act by the Imagine Schools Life Sciences West

Dear Mr. Wilson:

This advisory opinion is in response to your formal complaint alleging the Imagine Schools Life Sciences West (the "School") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.*

BACKGROUND

In your complaint, you allege that the School denied you access to the contents of your personnel file. You state that on March 20, 2010, the regional director of the School's school corporation responded to an email from you and informed you that you could "go to the school view [sic] and copy the contents of the file." You state that you arranged to meet with Keith Marsh, the School's principal, on March 25, 2010, to view the records. However, when you arrived at the School, you were presented with a summation of the contents of your file and not given access to the file itself. You allege that Mr. Marsh informed you that "viewing the file was in his opinion was [sic] unnecessary."

Mr. Marsh responded to your complaint on behalf of the School. He claims that the School's administrators have, in fact, provided you with two opportunities to review the contents of your personnel file. He says that the regional director sent you an email on March 20th that included copies of documents, and that you were given your file to copy when you visited the School on March 25th but you refused to take it. He claims that several individuals witnessed your review of the file. Moreover, he alleges that the School also gave you a free copy of all personnel file documents but you refused to take them.

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 contest 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). 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. 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, I am not convinced that the School ever denied your request within the meaning of the APRA. *See* I.C. §§ 5-14-3-3; 5-14-3-9. Rather, it appears the School made a good faith effort to provide you with the personnel records you requested. However, I do not make factual determinations so I cannot express an opinion with certainty. If the School has denied you access to personnel records it should cite a basis for doing so in accordance with section 9 of the APRA. I note that subsection 4(b)(8) of the APRA provides that “all personnel file information shall be made available to the affected employee or the employee’s representative.” I.C. § 5-14-3-4(b)(8). However, if the School can cite to another provision in section 4 of the APRA that allows it to withhold portions of your personnel file information, the School would not be in violation of the APRA by refusing to release such information to you.

Finally, because I am not a finder of fact, I note that you are free to pursue your legal remedies before a court -- which would have fact-finding authority -- pursuant to Ind. Code § 5-14-3-9(e).

CONCLUSION

For the foregoing reasons, it is my opinion that if the School was willing to grant you access to your personnel file and you refused such access, the School 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 style with a large, prominent 'A' and 'K'.

Andrew J. Kossack
Public Access Counselor

Cc: Keith A. Marsh