



STATE OF INDIANA

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June 22, 2011

Mr. Carlyle B. Edwards
532 Riga Place
East Chicago, IN 46312

Re: Formal Complaint 11-FC-122; Alleged Violation of the Access to Public Records Act by the School City of East Chicago

Dear Mr. Edwards:

This advisory opinion is in response to your formal complaint alleging the School City of East Chicago (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 failed to respond to three records requests that you hand-delivered on February 22, 2011 (one request), and April 12, 2011 (two requests). School Superintendent Michael Harding responded to your February 22nd request after your attorney, Marco Molina, wrote a letter to him regarding a lack of response.

Attorney Marsha Volk Bugalla responded to your complaint on behalf of the School. As a preliminary matter, Ms. Bugalla notes that your requests were not made with "reasonable particularity" in accordance with section 3 of the APRA. She also states that although the APRA permits public agencies to charge copy fees in advance of providing copies of public records, you initially refused to pay the fees associated with the records you requested. She claims that you ultimately agreed to pay those costs and the School released the records to you, but as of June 15th you had not yet paid the copy fee. Finally, she claims that the School has provided you with all the records you requested, and that the remaining items in your letters were not requests for records, but requests for answers to questions or for the School to conduct research on your behalf. Ms. Bugalla argues that the APRA does not require that the School comply with such requests if the School has otherwise complied with your requests for copies of records.

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 exempt from disclosure as nondisclosable under the APRA. I.C. § 5-14-3-3(a).

As an initial matter, I note that some of the allegations in your complaint are untimely. Formal complaints alleging violations of the APRA must be filed within 30 days of the denial. I.C. § 5-14-5-7. If a request for access to public records is delivered in person or via the telephone and the agency does not respond within 24 hours, the request is deemed denied. I.C. §5-14-3-9(a). You claim that you hand-delivered requests to the School on February 22nd and April 12th. If, as you allege, the School did not respond to those requests within 24 hours, the APRA deemed them denied as of February 23rd and April 13th, respectively. You filed your complaint on May 19th, which is more than 30 days after those denials. Consequently, I cannot express an opinion regarding allegations that the School violated the APRA with respect to those denials.

That said, I offer the following observations based on what appears to be the current status of this matter. The APRA provides that if a 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. Ms. Bugalla is correct that 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). Although the term “reasonable particularity” is not defined in the APRA, it has been analyzed a number of times by the public access counselor. *See, e.g., Ops. of the Public Access Counselor 99-FC-21 and 00-FC-15*. That said, if the School is unsure about what records you are requesting, it is the School’s responsibility to respond to you and ask you to clarify your request rather than ignoring it or failing to respond in a timely manner.

However, I agree with the School’s position that requests submitted in the form of interrogatories rather than requests for actual records are not valid requests under the APRA. 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>. Thus, in reviewing, for example, the “bullet points” you submitted with your April 12th request, the School is obligated to respond only to those elements of that request that sought access to existing records maintained by the School, such as a copy of “the SCEC policy for parent/community inclusion....” In accordance with Counselor Hurst’s opinion and the longstanding interpretation of this office, the School need not answer generalized questions that do not seek actual records. Ms. Bugalla claims that the School has provided you with all responsive records, but it is unclear whether the School has fully responded to the “bullet points” in your April 12th request (your complaint claims the School had not yet done so). If it has not already responded, I trust that the School will release all responsive, non-confidential records as soon as practicable.

Finally, I note that the APRA permits public agencies to require that public records requests be submitted on a form used by the agency, I.C. § 5-14-3-3(a), and to require that copy costs be paid prior to releasing public records. I.C. § 5-14-3-3(a). Once a public agency has released public records to a requester, however, it is unclear what recourse, if any, an agency has to recover unpaid copy fees.

CONCLUSION

For the foregoing reasons, it is my opinion that if the School maintains any additional records that are responsive to your requests that the School has not yet released to you, the School should either provide you with those records (subject to any applicable copy fees) or cite an exemption to the APRA that would permit the School to withhold the records. I express no opinion regarding alleged violations of the APRA that occurred more than 30 days prior to the date you filed your formal complaint.

Best regards,



Andrew J. Kossack
Public Access Counselor

Cc: Marsha Volk Bugalla