



# 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)

July 15, 2011

Mr. John W. Krpan  
13006 Brookmill Court  
Laurel, MD 20708

*Re: Formal Complaint 11-FC-151; Alleged Violation of the Access to Public Records Act by the Indiana School for the Deaf*

Dear Mr. Krpan:

This advisory opinion is in response to your formal complaint alleging the Indiana School for the Deaf (the "School") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* My office forwarded a copy of your complaint to the School on June 17, 2011, but we have not yet received a response.

## BACKGROUND

In your complaint, you allege that on June 9, 2011, you sent a records request to the School via email. Your request sought access to "copies of all records, documents, email communication, notes, etc., including communication with EEOC, about my application for English teacher and American sign language [sic] teacher." You also requested "free copies" of the records. You claim that the School never responded to your request.

## 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 School is 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 School's public records during regular business hours unless the records are excepted from disclosure as confidential or otherwise 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. Thus, if the School failed to respond to your facsimiled request within seven days of receiving it, the APRA deems your request denied. Under the APRA, when a 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). Consequently, the School's failure to deny your request in accordance with subsection 9(c) violated the APRA.

Without the benefit of a response from the School, it is unclear to me why your request was denied. Under the APRA, a public agency that withholds a public record bears the burden of proof to show that the record is exempt. I.C. §§ 5-14-3-1, 5-14-3-9(f) and (g). Exceptions to disclosure are narrowly construed. I.C. § 5-14-3-1. Because the School has not provided a justification for withholding the records at issue here, it is my opinion that the School has failed to sustain its burden. If the School cannot justify withholding the records under the APRA, I encourage the School to release the records to you as soon as possible. To the extent the School persists in its denial of access following the issuance of an advisory opinion from this office and you believe the School to be in violation of the APRA, I leave you to your remedies before a court pursuant to Ind. Code § 5-14-3-9(e).

I note, however, that nothing in the APRA requires that a public agency waive a copying fee. *See Opinion of the Public Access Counselor 07-FC-124*. The APRA permits a public agency to charge a fee for copies of public records, I.C. § 5-14-3-8, and the agency may require a person to pay the copying fee in advance. IC 5-14-3-8(e).

## CONCLUSION

For the foregoing reasons, it is my opinion that if the School never responded to your request, the School violated the APRA by failing to deny your request in accordance with subsection 9(c).

Best regards,



Andrew J. Kossack  
Public Access Counselor

cc: David Geeslin