



STATE OF INDIANA

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July 19, 2012

Mr. Brian Vukadinovich
1129 E. 1300 N.
Wheatfield, Indiana 46392

Re: Formal Complaint 12-FC-167; Alleged Violation of the Access to Public Records Act by the Hanover Community School Corporation

Dear Mr. Vukadinovich:

This advisory opinion is in response to your formal complaint alleging the Hanover Community School Corporation ("School") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Joanne M. Rogers, Attorney, responded on behalf of the School. Her response is enclosed for your reference.

BACKGROUND

In your formal complaint, you alleged that on June 18, 2012 you submitted a request to the School to inspect certain records. On June 20, 2012, the School acknowledged the receipt of your request in writing. On July 2, 2012, you e-mailed the School's attorney regarding the status of your request and sought the date for which the records would be available for review. The School's attorney responded to your inquiry and provided that you would need to contact another attorney that was working on your request. As of July 9, 2012, the date you filed your formal complaint with the Public Access Counselor's Office, the School has yet to provide any records that are responsive to your request and you believe you should not be required to contact multiple attorneys to inquire about the status of your request.

In response to your formal complaint, Ms. Rogers advised that in early May, 2012, the School Board informed the Corporation Superintendent; Ms. Carol Kaiser, that they would be seeking to retain new legal counsel. Accordingly, Ms. Kaiser responded to your May 8, 2012 letter and informed you she would begin compiling the records that were responsive to your request. On May 22, 2012, the School retained Mr. William Kaminski to serve as its General Counsel. Working in conjunction with the School, Mr. Kaminski collected and reviewed in excess of 400 pages of records.

Ms. Rogers further noted that during this time you had also has filed an EEOC claim against the School. Ms. Roger's firm represents the School relating to the EEOC

matter. Given Ms. Rogers prior involvement with your case, Mr. Kaminski thought it was advisable for the same firm to handle all matters relating to your records requests and EEOC matter. Thus, Mr. Kaminski forwarded to Ms. Rogers all the records that he had heretofore reviewed. On July 10, 2012, you were informed by Ms. Rogers that all records responsive to your request were available for inspection. The parties originally planned for the inspection to occur on July 13, 2012 at the School Administration Building. However, given the volume of records and the Administration Building's summer hours, a copy of all of the records was scanned to a disk and delivered to you on July 13, 2012. Ms. Rogers further noted that you requested an audio recording that the School is unable to copy; as such you were invited to inspect the recording at that time.

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." *See* I.C. § 5-14-3-1. The School is a public agency for the purposes of the APRA. *See* 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. *See* I.C. § 5-14-3-3(a).

A request for records may be oral or written. *See* I.C. § 5-14-3-3(a); § 5-14-3-9(c). If the request is delivered in person and the agency does not respond within 24 hours, the request is deemed denied. *See* I.C. § 5-14-3-9(a). 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. *See* I.C. § 5-14-3-9(b). A response from the public agency could be an acknowledgement that the request has been received and include information regarding how or when the agency intends to comply. Here, you submitted a written request for inspection to the School on June 18, 2012, to which it responded in writing on June 20, 2012. As such, it is my opinion that the School complied with the requirements of section 9 of the APRA in responding to your request for records.

Effective July 1, 2012, the APRA provides a public agency shall provide records that are responsive to the request within a reasonable time. *See* I.C. § 5-14-3-3(b). The public access counselor has stated that factors to be considered to be considered in determining if the requirements of section 3(a) under the APRA have been met include, 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. The APRA requires an agency to separate and/or redact confidential information in public records before making the disclosable information available for inspection and copying. *See* I.C. § 5-14-3-6(a). 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. *See* 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. *See* 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. *See Opinion of the Public Access Counselor 02-FC-45*. This office has often suggested a public agency make portions of a response available from time to time when a large number of documents are being reviewed for disclosure. *See Opinions of the Public Access Counselor 06-FC-184; 08-FC-56; 11-FC-172*. Further nothing in the APRA indicates that a public agency's failure to provide "instant access" to the requested records constitutes a denial of access. *See Opinions of the Public Access Counselor 09-FC-192 and 10-FC-121*.

I would initially note that your request submitted to the School was quite broad. You sought to inspect the following records:

- Complete copy of minutes of School board meeting on June 11, 2012.
- Audio tape recording of School Board meeting on June 11, 2012.
- All notes, memos, writings, letters, emails, facsimiles that were generated about Brian Vukadinovich in connection to the School Board meeting on June 11, 2012.
- All statements and billing records pertaining to the employment of attorney(s) for the School Board meeting on June 11, 2012.
- All bids and associated information that was received from any attorneys/law firms that were received in the process of selecting a law firm to provide legal representation for the Hanover Community School Corporation commencing in 2012.
- All information that was submitted by the law firm Newby, Lewis, Kaminsky, and Jones in the process wherein this firm was selected to represent the Hanover Community School Corporation to include but not limited to any and all agreements, fee structures, travel allowances, etc.
- All records of legal expenses involved in the nonrenewal contract matter of Brian Vukadinovich.
- Personnel file of Jason Yurechko to include but not limited to the application for employment, contract, compensation records, job description, education and training background, previous work experience, dates of first and last employment, etc.
- Copies of all posters/fliers that were generated by Jason Yurechko bearing the approval of Justin Biggs publicizing Jason Yurechko's classes with notation for student to see guidance to add Mr. Yurechko's classes to the student's schedule.

- All financial records associated with any and all payments that have been made to individual school board members from 2007 up to the present to include but not limited to salary, meetings, travel expenses, lodging, meals, etc.
- All financial records associated with any and all payments that have been made to Carol Kaiser and Justin Biggs from the beginning of their respective employments to the present to include any taxpayer money used for their attendance at any meetings, travel expenses, lodging.

In addition to the time required of the School to collect all records that were responsive to this request, you submitted a two other similarly broad records request to the School that was the subject of Formal Complaints 12-FC-168 and 12-FC-169. *See Opinion of the Public Access Counselor 12-FC-168 and 12-FC-169.* In addition to collecting the records, the School was also required to review each record prior to its disclosure to insure that all confidential information was redacted. Failure on the School's part to redact confidential information could result in criminal penalties pursuant to I.C. § 5-14-3-10. The School was responsive to your inquires regarding the status of your request, however it would be impossible for an attorney to comment on a matter that he was not representing the School on. Instead of ignoring your request, the original attorney provided that you should contact the attorney that was responsible for working on your request. It is my opinion that the School did not violate the spirit or letter of the APRA in responding to your inquiry in this fashion. Due to the vast nature of the requests submitted to the School, the requirements that the records are reviewed prior to disclosure, and that all records were provided to you on July 13, 2012, it is my opinion that the School responded to your request in a reasonable period of time.

CONCLUSION

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

Best regards,



Joseph B. Hoage
Public Access Counselor

cc: Joanne M. Rogers