



# STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

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September 24, 2012

Bart Betteau  
1212 State Street  
New Albany, Indiana 47150

*Re: Formal Complaint 12-FC-274; Alleged Violation of the Access to Public Records Act by the New Albany/Floyd County Consolidated School Corporation*

Dear Ms. Betteau:

This advisory opinion is in response to your formal complaint alleging the New Albany/Floyd County Consolidated School Corporation ("School") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* John W. Woodard, Jr., Attorney, responded on behalf of the School. His response is enclosed for your reference. I have granted your complaint priority status pursuant to 62 Indiana Administrative Code 1-1-3.

## BACKGROUND

In your formal complaint, you provide that as an attorney, you represent a client who has been interrogated by the School regarding alleged misconduct. You wish to obtain the records of other disciplinary actions taken by the School for the previous five years, including, but not limited to, disciplinary actions for misconduct similar to that alleged against your client. You made your initial request to the School, in writing, on or about September 6, 2012. On the same date, Mr. Woodard responded in writing to your request and acknowledged its receipt. The School treated your request as one for "all disciplinary records for all employees for the last five years." On September 11, 2012, the School responded that your request did not identify the records requested with reasonable particularity and thus it was denied pursuant to I.C. § 5-14-3-3(a)(1) and I.C. § 5-14-3-4(b)(8)(C).

In response to your formal complaint, Mr. Woodward provided that while certain personnel file information must be disclosed, I.C. § 5-14-3-4(b)(8) provides that the subdivision that requires such disclosure "does not apply to disclosure on all employees or for groups of employees without the request being particularized by employee name. *See also Opinions of the Public Access Counselor 12-FC-100; 07-FC-170; 07-FC-337; and 04-FC-98.* Your request was not particularized by employee name, nor did it



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identify whether, or even if, you were making the request on behalf of any particular client. Further, the School was required to comply with the requirements of I.C. § 5-14-3-7(a) in response to your request. Thus, the School's denial of your request complied with the requirements of I.C. § 5-14-3-9(c) as it was made in writing, cited to the specific statutory exemptions authorizing withholding of the records, and included the name and title of the person responsible for the denial.

## 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. Under the APRA, a public agency denying access in response to a written public records request must put that denial in writing and include the following information: (a) a statement of the specific exemption or exemptions authorizing the withholding of all or part of the public record; and (b) the name and title or position of the person responsible for the denial. See I.C. § 5-14-3-9(c). Counselor O'Connor provided the following analysis regarding section 9:

Under the APRA, the burden of proof beyond the written response anticipated under Indiana Code section 5-14-3-9(c) is outlined for any *court action* taken against the public agency for denial under Indiana Code sections 5-14-3-9(e) or (f). If the public agency claimed one of the exemptions from disclosure outlined at Indiana Code section 5-14-3-4(a), then the agency would then have to either "establish the content of the record with adequate specificity and not by relying on a conclusory statement or affidavit" to the



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*court.* Similarly, if the public agency claims an exemption under Indiana Code section 5-14-3-4(b), then the agency must prove to the court that the record falls within any one of the exemptions listed in that provision and establish the content of the record with adequate specificity. There is no authority under the APRA that required the IDEM to provide you with a more detailed explanation of the denials other than a statement of the exemption authorizing nondisclosure, but such an explanation would be required if this matter was ever reviewed by a trial court. (emphasis added). *Opinion of the Public Access Counselor 01-FC-47.*

The APRA provides that certain personnel records may be withheld from disclosure:

(b) Except as otherwise provided by subsection (a), the following public records shall be excepted from section 3 of this chapter at the discretion of a public agency:

(8) Personnel files of public employees and files of applicants for public employment, except for:

- (A) the name, compensation, job title, business address, business telephone number, job description, education and training background, previous work experience, or dates of first and last employment of present or former officers or employees of the agency;
- (B) information relating to the status of any formal charges against the employee; and
- (C) the factual basis for a disciplinary action in which final action has been taken and that resulted in the employee being suspended, demoted, or discharged.

However, all personnel file information shall be made available to the affected employee or the employee's representative. This subdivision does not apply to disclosure of personnel information generally on all employees or for groups of employees without the request being particularized by employee name. I.C. § 5-14-3-4(b)(8).



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The School denied your request in writing, cited to I.C. § 5-14-3-3(a)(1) and I.C. § 5-14-3-4(b)(8)(C) as the basis for the denial, and provided the name and title of the person that was responsible for the denial. As I.C. § 5-14-3-4(b)(8)(C) provides that the disclosure of information under the subsection does not apply to the disclosure of personnel information generally or for groups of employees without the request being particularized by name, it is my opinion that the School did not violate the APRA as your request for disciplinary records was general in nature. To the extent you provide the School with the names of current or prior employees, it would be required to provide all information maintained by the School that is specifically provided for in I.C. § 5-14-3-4(b)(8) in response to your request. *See Opinions of the Public Access Counselor 12-FC-100; 07-FC-170; & 07-FC-337.*

## CONCLUSION

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

Best regards,

A handwritten signature in black ink that reads "J. Hoage".

Joseph B. Hoage  
Public Access Counselor

cc: John W. Woodard, Jr.