



# STATE OF INDIANA

MICHAEL R. PENCE, Governor

PUBLIC ACCESS COUNSELOR  
JOSEPH B. HOAGE

Indiana Government Center South  
402 West Washington Street, Room W470  
Indianapolis, Indiana 46204-2745  
Telephone: (317) 234-0906  
Fax: (317) 233-3091  
1-800-228-6013  
www.IN.gov/pac

April 29, 2013

Ms. Shannon M. Wills  
710 Kensington Drive  
Indianapolis, Indiana 46226

*Re: Formal Complaint 13-FC-105; Alleged Violation of the Access to Public Records Act by the Challenge Foundation Academy*

Dear Ms. Wills:

This advisory opinion is in response to your formal complaint alleging the Challenge Foundation Academy ("Academy") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* A copy of your formal complaint was submitted to the Academy on April 2, 2013. The Academy's response was due no later than April 25, 2013. As of today's date, we have yet to receive a response.

## BACKGROUND

You allege that Dr. Rose Mays orally denied your request to be shown the disciplinary action taken against an employee of the Academy regarding the employee's interaction with your child. After being orally denied, you then requested a written document of the statute that would give the Academy the authority to deny your request. In response, Dr. Mays provided a single page from the Academy's staff handbook.

## 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. Under Indiana law, a charter school is a public school. *See* I.C. § 20-24-4-1(4). Among other requirements, a charter school's charter must specify that records of the charter school are subject to inspection and copying to the same extent that records of a public school are subject to inspection and copying under the APRA and that meetings of the school's governing body are subject to the requirements of the Open Door Law ("ODL"). *See* I.C. § 20-24-4-1(13), (15). Consequently, the Academy constitutes a public agency for the purposes of Indiana's Public Access Laws. *See* I.C. § 5-14-3-2.1; I.C. § 5-14-1.5-2(a). Accordingly, any person has the right to inspect and copy the Academy's public records during regular business hours unless the public 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). You initially submitted an oral request for records to the Academy. Dr. Mays verbally denied your request. I.C. § 5-14-3-9(c) provides that if a request is made orally, either in person or by telephone, a public agency may deny the request orally. As such, it is my opinion that the Academy did not violate the APRA by orally denying your oral request.

After your oral request was denied, you then inquired with Dr. Mays what statute would allow the Academy to deny your request. It is unclear whether your secondary request was submitted orally or in writing. The record provided by the Academy in response to your secondary request indicated that the personnel files of Academy employees are restricted. If the secondary request was submitted orally, the Academy did not violate the APRA in its response. However, if your secondary request was made in writing, the Academy would be required to comply with the section 9(c)(1)-(2) of the APRA. 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 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. *See* I.C. § 5-14-3-9(c)(1)-(2). If your secondary request was submitted in writing, the Academy acted contrary to the requirements of section 9(c)(1)-(2) by failing to cite to the specific exemption that would authorize the records withholding.

As to the substance of your secondary denial, 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).

In other words, the information referred to in (A) - (C) above must be released upon receipt of a public records request, but a public agency may withhold any remaining records from the employees personnel file at their discretion. If the Academy employee in question was not suspended, demoted, or discharged as a result of the disciplinary action, then the requirements of (C) would not apply. Any records disclosed in response to your request would be made at the Academy's discretion. If the Academy employee was suspended, demoted, or discharged as a result of the disciplinary action, the Academy would be required to provide from records maintained by the agency the factual basis for the disciplinary action.

### CONCLUSION

For the foregoing reasons, it is my opinion that the Academy did not violate the APRA by orally denying your initial oral request. As to your secondary request, if the secondary request was submitted orally, the Academy did not violate the APRA in its response. However, if your secondary request was made in writing, the Academy acted contrary to the requirements of section 9(c)(1)-(2) of the APRA by failing to cite to the specific exemption that would authorize the records withholding.

Best regards,

A handwritten signature in black ink, appearing to read "J. Hoage". The signature is written in a cursive style with a large initial "J" and a long, sweeping underline.

Joseph B. Hoage  
Public Access Counselor

cc: Dr. Rose Mays