



STATE OF INDIANA

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February 5, 2013

Ms. Marisa Kwiatkowski
2090 N. Main Street
Crown Point, Indiana 46307

Re: Formal Complaint 13-FC-11; Alleged Violation of the Access to Public Records Act by the Gary Community School Corporation

Dear Ms. Kwiatkowski:

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

BACKGROUND

In your formal complaint you provide that on December 5, 2012, you requested the dates of employment for Michael Ritchie and copies of any disciplinary action filed against him while employed by the School. After not receiving any response from the School, you left a voicemail for the School's Public Information Officer, Charmella Greer, regarding the status of your request. On December 20, 2012, Ms. Greer left a voicemail for you and provided that the situation is still under review and that no information could be revealed at this time. You thereafter spoke with Ms. Greer and asked that the School's denial be put in writing, which she agreed to do. On December 20, 2012, you sent her an email so that Ms. Greer would have your respective contact information to provide you with a copy of the written denial. Since December 20, 2012, you have submitted multiple inquiries with Ms. Greer regarding the status of your denial. As of January 9, 2013, you have yet to receive a response from Ms. Greer or any other representative from the School.

In response to your formal complaint, Ms. Coleman provided that your request was being processed and the information requested pursuant to I.C. § 5-14-3-4(b)(8) will be produced, if available. Ms. Coleman further advised that no denial has been issued in response 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.” *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 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 information regarding how or when the agency intends to comply. 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).

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 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*.

The APRA provides that personnel files of public employees and files of applicants for public employment may be excepted from the APRA’s disclosure requirements, 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. 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.

As applicable here, your initial request for records was submitted to the School on December 5, 2012. The request concerned a single, former employee and has not been described as broad by either party. In response to your formal complaint, Ms. Coleman advised that as of February 2, 2013, the School is still processing your request; over two months after having received the initial request. In light of these factors and the School's reluctance to respond to your inquiries regarding the status of your request while it was being processed, it is my opinion that the School acted contrary to section 3(b) of the APRA by failing to provide all records responsive to your request in a reasonable period of time. As outlined *supra*, section 4(b)(8) of the APRA requires that certain information maintained by the School be provided in response to a public records request. If the School elects to exercise its discretion and deny any part of your request for records not required to be produced under section (4)(b)(8), it would need to ensure that the denial be made in writing and comply with section 9(c) of the APRA.

CONCLUSION

Based on the foregoing reasons, it is my opinion that the School acted contrary to the requirements of section 3(b) of the APRA in not providing all records responsive to your request in a reasonable period of time.

Best regards,



Joseph B. Hoage
Public Access Counselor

cc: Tracey A. Coleman