



**STATE OF INDIANA**  
**MICHAEL R. PENCE, Governor**

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July 12, 2013

Mr. Sam Shaw  
627 H Street  
Bedford, Indiana 47421

*Re: Formal Complaint 13-FC-190; Alleged Violation of the Access to Public Records Act by the North Lawrence Community School Corporation*

Dear Mr. Shaw:

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

#### BACKGROUND

In your formal complaint, you provide that on June 21, 2013 you submitted a request to the School to obtain a disc containing the meeting minutes from the June 13, 2013 School Board meeting. You allege that your request was denied as no one was present to accept your request. On June 24, 2013, you submitted a second request and allege that you were denied access to the minutes as the minutes had yet to be approved by the School Board.

In response to your formal complaint, Mr. Pittman advised that the School has no record of receiving a request for records from you on June 21, 2013 or June 24, 2013. While the School does retain audio recordings of all Board meetings, it does not transcribe the recordings. Any party may obtain a copy of the audio recordings upon receipt of the respective fees. You have been extended the opportunity to listen to the recordings at the School's Administration building, but you have to exercise that option. Further, no minutes of the Board exist until they are approved by the Board at its next regular session. Mr. Pittman provided that you have never been denied access to copies of minutes from the Board's meetings.

#### 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).

The School maintains that it did not receive your requests. As previous Public Access Counselor’s have provided, the Public Access Counselor is not a finder of fact. *See Opinion of the Public Access Counselor 10-FC-15*. Consequently, I express no opinion as to whether or not the School received your request. Under the APRA, if a request is delivered by mail or facsimile and the agency does not respond to the request within seven days of receipt, the request is deemed denied. *See* I.C. § 5-14-3-9(b). A public agency may deny a request if: (1) the denial is in writing or by facsimile; and (2) the denial includes: (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 the title or position of the person responsible for the denial. *See* I.C. §5-14-3-9(c). If the School received your requests and did not respond to it within these timeframes, the School acted contrary to the APRA. However, if the School did not receive your requests, it was not obligated to respond to them.

As a refresher for all parties, the Open Door Law requires that governing bodies keep memoranda for all meetings that are conducted. The ODL does not require that a governing body keep minutes; however if kept, minutes of a meeting must be open for inspection and copying under the APRA. *See* I.C. § 5-14-1.5-4(c). As for memoranda, the ODL specifically provides that the following shall be kept:

- (1) The date, time, and place of the meeting.
- (2) The members of the governing body recorded as either present or absent.
- (3) The general substance of all matters proposed, discussed, or decided.
- (4) A record of all votes taken, by individual members if there is a roll call.
- (5) Any additional information required under I.C. § 5-1.5-2-2.4. I.C. § 5-14-1.5-4(b).

The memoranda are to be available within a reasonable period of time after the meeting for the purpose of informing the public of the governing body’s proceedings. *See* I.C. § 5-14-1.5-4(c). As to “draft” minutes or memoranda, meeting minutes in draft or unapproved form are subject to inspection and copying in response to a request under the APRA. *See Opinion of the Public Access Counselor 98-FC-8* at 1 (“Once created, draft or proposed minutes are public records and nondisclosure must be based upon one of the exceptions outlined in the APRA.”); *See also Opinions of the Public Access Counselor 01-FC-65; 05-FC-23; 10-FC-264*. If the governing body is concerned about releasing the minutes in draft form, it could include a disclaimer on any copies noting that the minutes are not yet approved and subject to revision. *See Opinions of the Public*

*Access Counselor 01-FC-65 and 10-FC-264.* Although not applicable here as the School maintains it never received your request, it may not deny a request for the minutes from a Board meeting that have been created, but are yet to be approved by the School Board.

#### CONCLUSION

For the foregoing reasons, it is my opinion that the School did not violate the APRA if it never received your requests.

Best regards,

A handwritten signature in black ink, appearing to read "J. Hoage". The signature is stylized with a large initial "J" and a cursive "Hoage".

Joseph B. Hoage  
Public Access Counselor

cc: James G. Pittman