



STATE OF INDIANA

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October 11, 2013

Richard E. Volbrecht, Jr.
9221 Parkway Dr.
Highland, IN 46322

Re: Formal Complaint 13-FC-271; Alleged Violation of the Access to Public Records Act by the School Town of Highland

Dear Mr. Volbrecht,

This advisory opinion is in response to your formal complaint alleging the School Town of Highland, ("School") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et. seq.* Mr. Brian J. Smith, Superintendent, responded on behalf of the School. His response is enclosed for your reference. Pursuant to Ind. Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on September 11, 2013.

BACKGROUND

Your complaint alleges the School Town of Highland violated the Access to Public Records Act by denying your request in violation of Ind. Code § 5-14-3-3(b). You allege that on or about August 21, 2013 at 3:27 a.m., you served upon the School a Request for Access to Public Record by email requesting an audio CD copy of the August 20, 2013 Highland School Board Meeting.

The School has submitted documentation they acknowledged receipt of your request at 6:46 a.m., on August 21, 2013. You claim you never received that reply. You have made weekly requests for audio recordings of the School Board Meetings since December 20, 2012 and have indicated the School has never failed to provide you a copy outside of ten (10) business days since your first request. You filed your formal complaint on September 11, 2013, fourteen (14) business days after 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 Ind. Code § 5-14-3-1. The School Town of Highland is a public agency for the purposes of the APRA. See Ind. Code § 5-14-3-2(n)(1). Accordingly, any person has the right to inspect and copy the School’s public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. See Ind. Code § 5-14-3-3(a).

A request for records may be oral or written. See Ind. Code § 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 Ind. Code § 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 Ind. Code § 5-14-3-9(b). A response from the public agency could be an acknowledgement the request has been received and information regarding how or when the agency intends to comply.

It is clear from the documentation submitted by the School that Ms. Lucy Lobodzinski of the School Town of Highland Superintendent’s Office acknowledged the receipt of your request three (3) *hours* after you sent it. A public agency has seven (7) *days* to respond to a request before it is deemed denied. The School clearly did not violate any timeliness requirements as to the response. It is unclear why you did not receive that particular communication.

You also seem to take great exception to the amount of time it took the School to produce the documents you seek. Due to your lengthy history of requesting School Board recordings, it is clear the School has set a precedent for responding to your requests in a timely fashion. The School should be commended for their accessibility. In his response, Mr. Smith indicated the School was experiencing some technical issues with their electronic repository for the recordings due to school renovation. These issues delayed the production of the audio CD by a couple weeks.

It is unclear whether as of the date of the issuance of this opinion, if the CD was released to you. There has been no indication either way. However, for the purposes of this Opinion, I will only focus on the amount of time between your request and the date of the filing of your formal complaint.

There is no “immediate” production requirement in the APRA – only that the public agency produce the records in a reasonable amount of time. See Ind. Code § 5-14-3-3(b). In the current case, the School has set the bar high in getting the recordings to you within just a few business days. However, it must be recognized that as important as transparency and open access are, a public agency has other responsibilities and duties besides providing documents. The normal operations of an office may include renovations and temporary computer and technological issues from time to time. This is

not outside the realm of logistic practicality and a delay due to such considerations cannot be considered a violation of APRA. The School has given no indication they intend to deny your current request or any other requests in the future.

CONCLUSION

For the foregoing reasons, it is the Opinion of the Office of the Public Access Counselor the School Town of Highland did not violate the Access to Public Records Act.

Regards,

A handwritten signature in black ink, appearing to read 'LH Britt', with a long, sweeping underline.

Luke H. Britt
Public Access Counselor

cc: Brian J. Smith