



STATE OF INDIANA

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September 16, 2016

Mr. Rick Volbrecht
9221 Parkway Drive
Highland, Indiana 46322

Re: Formal Complaint 16-FC-186; Alleged Violation of the Access to Public Records Act by the Indiana Department of Education

Dear Mr. Volbrecht:

This advisory opinion is in response to your formal complaint alleging the Indiana Department of Education (“DOE”) violated the Access to Public Records Act (“APRA”), Indiana Code § 5-14-3-1 et. seq. The DOE has responded via Ms. Kelly M. Bauder, Esq. Her response is enclosed for your review. Pursuant to Indiana Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on August 4, 2016.

BACKGROUND

Your complaint dated August 4, 2016, alleges the Indiana Department of Education violated the Access to Public Records Act by failing to timely respond to provide the records you requested. When you did receive the documentation, you also sought a correction of information on what you considered errors in the records.

On or about June 6, 2016, you requested documentation from the DOE regarding Highland School Corporation’s (“School”) rating calculation. You received the documents on July 19, 2016. However, you identified what you perceived as discrepancies in the data. You reached out to the DOE on or about July 21, 2016 about the errors and have not received what you consider a satisfactory response.

Based on the information provided, after the errors were brought to DOE’s attention, it corrected the issue by sending a letter to the School. You received a copy of this correspondence. The DOE did not alter the original errors in the file it sent to you, but considered the issue remediated by the follow-up letter to the School. It maintains there is no other document to provide to you which you do not already have.

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 Indiana Code § 5-14-3-1*. The Indiana Department of Education is a public agency for the purposes of the APRA. *See Indiana Code § 5-14-3-2(n)(1)*. Accordingly, any person has the right to inspect and copy the DOE’s disclosable public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. *See Indiana Code § 5-14-3-3(a)*.

A request for records may be oral or written. *See Indiana Code § 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 Indiana 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.

I have held on many occasions a public agency does not have to create a document in order to satisfy a public records request. In essence, that appears what you have requested of the DOE. When you found the errors in the records, the DOE fixed the problem by sending a correction letter to the School. However, it did not alter its internal data and nothing in the APRA would obligate DOE to do so. It appears as if the Department was proactive in providing you the records you were seeking and based on the information provided – other than a delay in acknowledging your June 6, 2016 request -I do not see any violation of the APRA on the part of DOE.

CONCLUSION

Based on the forgoing, it is the opinion of the Public Access Counselor the Indiana Department of Education has not violated the Access to Public Records Act.

Regards,

A handwritten signature in black ink, appearing to read 'LH Britt', with a long horizontal flourish extending to the left.

Luke H. Britt
Public Access Counselor

Cc: Ms. Kelly Bauder, Esq.