
OPINION OF THE PUBLIC ACCESS COUNSELOR

STEPHEN D. BUTLER,
Complainant,

v.

MSD OF NORTH POSEY COUNTY,
Respondent.

Formal Complaint No.
17-FC-225

Luke H. Britt
Public Access Counselor

BRITT, opinion of the Counselor:

This advisory opinion is in response to a formal complaint alleging the Metropolitan School District of North Posey County (“North Posey”) violated the Access to Public Records Act¹ (“APRA”). Superintendent Dr. Todd E. Camp issued a response on behalf of North Posey. Pursuant to Indiana Code § 5-14-5-10, I issue the following opinion to the formal complaint received by the Office of the Public Access Counselor on September 11, 2017.

¹ Ind. Code §§ 5-14-3-1 to -10

BACKGROUND

Stephen Butler (“Complainant”) alleges North Posey violated APRA by wrongfully denying him access to a public record.

On July 21, 2017, Butler filed a request with North Posey seeking the following:

[A] list of employees who were on the Wellness Committee from 2012 to date and the period in which they were active.

Notably, from 2012 until May 2016 North Posey had two separate committees with the word *wellness* in the title: (1) Wellness Committee for Teachers; and (2) Wellness Committee for Lunch. Beginning with the 2016-2017 school year, a state law began requiring certain school officials to be members on the “Wellness Committee”—which serves the same purpose as North Posey’s Wellness Committee for Lunch.

On July 24, 2017, North Posey responded to Butler’s request by providing a list of the members on the “Wellness Committee for Lunch” for the years 2012 through 2016. Butler contends that North Posey’s response did not match another committee roster provided to him by his school board representative. Although Butler’s request sought a list of employees on the wellness committee, he states in his complaint narrative that he wanted to find out the membership of the *school insurance committee*. In its response, North Posey

contends that the Wellness Committee for Teachers—mentioned above—is the committee that addresses medical insurance matters.

North Posey claims that it has not violated APRA in this case because no responsive public records existed at the time of Butler’s request. What is more, North Posey contends that it responded in good faith to the request by writing a document listing the committee members it reasonably believed to be a responsive to Butler’s request. Lastly, North Posey has included with its response the members of the 2012 “Wellness Committee for Teachers.”

ANALYSIS

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.” Ind. Code § 5-14-3-1. The MSD of North Posey County is a public agency for the purposes of the APRA. Ind. Code § 5-14-3-2(n). Therefore, any person has the right to inspect and copy the School’s disclosable public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA.

If a record exists at the time of the request, a public agency may not restrict access unless a specific exemption to disclosure applies. *See* Ind. Code § 5-14-3-3. Even so, if a record does not exist, it need not be created in order to fulfill a request.

In this case, based on the information provided, it appears as if no responsive records existed at the time of the request; and thus, the APRA was not violated.

However, putting aside the fact that failing to maintain updated committee rosters is a cavalier approach to governance, the Open Door Law (“ODL”) mandates that all meetings of governing bodies must have minutes documenting the presence and absence of its members. *See* Ind. Code § 5-14-1.5-4(b)(2). Therefore, meeting minutes would ostensibly contain a sitting member roster at the time and date of a meeting.

Based on the information provided, it appears as if the “wellness” committees would qualify as a governing body based upon the definition in the ODL. If a committee is charged with the authority to take official action on public business, it qualifies as a governing body. Under the ODL, *official action* means to:

- (1) receive information;
- (2) deliberate;
- (3) make recommendations;
- (4) establish policy;
- (5) make decisions; or
- (6) take final action.

Ind. Code § 5-14-1.5-2(d). Notably, the ability to make binding decisions is not a prerequisite for a governing body. *See* Ind. Code § 5-14-1.5-2(b) (““Governing body” means two (2) or more individuals who are...Any committee appointed directly by the governing body or its presiding officer to which authority to take official action upon

public business has been delegated.). Moreover, a committee does not have to be comprised of public officials, administrators or superintendents. It can be made up of volunteers, rank-and-file public employees, teachers, or otherwise.

It is clear that North Posey's school board relied on the "Wellness Committees" to make recommendations to the board at-large. This delegation qualifies as the creation of a governing body and the official action of governing bodies must be done in public and must be memorialized via minutes.

This would satisfy interested members of the public curious as to the goings-on of their representative officials and designees. Therefore, while the Public Records Act may have not been implicated in this complaint, it appears as if the Open Door Law is applicable.

CONCLUSION

Based on the foregoing, it is the opinion of the Public Access Counselor that the MSD of North Posey County did not violate the Access to Public Records Act but likely violated the Open Door Law.

A handwritten signature in black ink, appearing to read 'LH Britt', with a stylized flourish at the end.

Luke H. Britt
Public Access Counselor