
OPINION OF THE PUBLIC ACCESS COUNSELOR

ALEXANDREA E. KIRKMAN,
Complainant,

v.

SOUTH BEND COMMUNITY SCHOOL CORP.,
Respondent.

Formal Complaint No.
20-FC-37

Luke H. Britt
Public Access Counselor

BRITT, opinion of the Counselor:

This advisory opinion is in response to a formal complaint alleging the South Bend Community School Corporation violated the Access to Public Records Act.¹ Attorney Amy Steketee Fox responded to the complaint. In accordance with 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 March 10, 2020.

¹ Ind. Code § 5-14-3-1-10.

BACKGROUND

This case involves a dispute over the access to a settlement agreement maintained by the South Bend Community School Corporation (SBCSC).

On January 13, 2020, the SBCSC board approved a settlement agreement. Alexandria E. Kirkman (Complainant), a journalist, requested the settlement agreement from SBCSC.

After receiving and reviewing the record, Kirkman contends that SBCSC over-redacted the document. SBCSC relied on the Family Educational Rights and Privacy Act (FERPA) as justification for the redactions.

On March 9, 2020, Kirkman filed a formal complaint with this office. Kirkman included the seven page settlement agreement with the complaint. The first three pages of document are heavily redacted.

In response, the SBCSC offers a well-researched and comprehensive justification for the redactions by citing FERPA and prior public access counselor opinions, arguments which will not be repeated in entirety here, but are reasonable and more than a mere cursory invocation of FERPA and privacy laws in general.

ANALYSIS

1. The Access to Public Records Act

The Access to Public Records Act (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 South Bend School Corporation (SBCSC) is a public agency for purposes of APRA; and therefore, subject to its requirements. *See* Ind. Code § 5-14-3-2(q). As a result, unless an exception applies, any person has the right to inspect and copy SBCSC’s public records during regular business hours. Ind. Code § 5-14-3-3(a).

Indeed, APRA contains exceptions—both mandatory and discretionary—to the general rule of disclosure. In particular, APRA prohibits a public agency from disclosing certain records unless access is specifically required by state or federal statute or is ordered by a court under the rules of discovery. *See* Ind. Code § 5-14-3-4(a). In addition, APRA lists other types of public records that may be excepted from disclosure at the discretion of the public agency. *See* Ind. Code § 5-14-3-4(b).

2. FERPA

The crux of Kirman’s complaint is that the SBCSC improperly redacted a settlement agreement that requires the district to undertake certain actions and compensate a student or parent, or both in relation to the agreement. In response,

SBCSC argues that it appropriately applied FERPA in redacting the document and separated the remainder for disclosure. Notably, SBCSC disclosed all financial compensation, which gives the reader an idea of the consideration exchanged under the agreement.

Settlement agreements entered into by public agencies are almost universally disclosable under APRA. It can be a bit different with schools, however, when students' educational activities are implicated. Even so, it is no secret this office often questions the way schools sometimes apply FERPA in a heavy-handed manner as a convenient way to withhold information. At first glance, the manner in which SBCSC redacted this agreement raised similar red flags.

Upon closer inspection, however, even without the benefit of an unredacted copy, the redactions appear directly related to educational and student-centric matters. Based upon the specific circumstances – before now unknown to this office – the redacted portions, if known to the public, could identify a student and violate FERPA.

This is not a ratification of heavy redactions. It is not even an endorsement of these redactions, but SBCSC has not given a casual dismissal of the concerns or a conclusory statement of the denial. It has sustained its burden that the redactions were effectuated thoughtfully.

Without the benefit of an unredacted copy, it is impossible for this office to conclude definitively if the redactions are appropriate. Other instances of heavy redactions have raised an inference of overuse. That is not the case here. In context, the redactions seem to hold up to scrutiny as likely being educational in nature and specific to an individual student.

CONCLUSION

Based on the foregoing, it is the opinion of this office that South Bend Community School Corporation did not violate the Access to Public Records Act.

A handwritten signature in black ink, appearing to read 'LH Britt', is positioned above the printed name.

Luke H. Britt
Public Access Counselor