

January 4, 2001

Mr. Richard E. Volbrecht, Jr.
9221 Parkway Drive
Highland, IN 46322

Re: Advisory Opinion 00-FC-43; *Denial of Access to Public Records by the School Town of Highland.*

Dear Mr. Volbrecht:

This is in response to your formal complaint, which was received on December 18, 2000. You have alleged that the School Town of Highland ("School Town") violated the Indiana Access to Public Records Act ("APRA") Indiana Code chapter 5-14-3. Although you received a response within twenty-four (24) hours of the delivery of your hand-delivered request of November 27, 2000, you allege that the School Town effectively denied your request by not responding directly to your request. Ms. Judith DeMuth, Assistant Superintendent for the School Town, responded in writing to your complaint. A copy of her response is enclosed.

Based upon the facts as presented in your complaint, it is my opinion that the School Town's e-mail message to you in response to your request for public records did not address your request and constituted a denial that is actionable under Indiana Code section 5-14-3-9 of the APRA.

BACKGROUND

According to your complaint, you hand-delivered a public records request to the School Town November 27, 2000. In that request, you asked for a copy of the contract and any addenda for Mr. Pete Kokinda in his position as an interim assistant principal at Highland High School, including information concerning all benefits related to this employment. On the same day, Ms. DeMuth sent you an e-mail message indicating that "Mr. Kokinda is no longer with the School Town of Highland." You allege that Ms. DeMuth's e-mail was not responsive to your request, and essentially an unstated denial. You then filed your formal complaint with this Office on December 18, 2000.

In her response to your formal complaint, Ms. DeMuth stated the Mr. Kokinda was only temporarily assigned to the position of assistant principal at the high school and was paid as a substitute on a day-to-day basis from November 14 through 27, 2000. According to her letter "(t)here was no contract or benefits extended to Mr. Kokinda during his time as a substitute; therefore, there were no documents to provide."

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." Ind. Code §5-14-3-1. The School Town is clearly a public agency for the purposes of the APRA. Ind. Code §5-14-3-2. Accordingly, any person has the right to inspect and copy the public records of the School Town during regular business hours unless the public records are excepted from disclosure as confidential or otherwise nondisclosable under Indiana Code section 5-14-3-4. Ind. Code §5-14-3-3(a).

It is the responsibility of the public agency to respond to requests for public records within a specified time period. The APRA does not set any time periods for producing public records, merely for responding to the request. While this response has not been defined under the APRA, what is contemplated is a communication to the requestor. For example, a public agency may respond that the request has been received, whether there are any records that will be produced, that the records requested are confidential or otherwise nondisclosable, or that the public agency needs more time to compile the records requested. A response may also provide the records requested, or notify the requestor that the public records requested are available for his or her inspection.

A public agency is required to make a response to a hand-delivered written request within twenty-four (24) hours after it is received; the failure to do so constitutes a denial under the APRA. Ind. Code §5-14-3-9(b). Once a denial has occurred under the APRA, a person may file suit in the circuit or superior court in which the denial took place to compel the public agency to disclose the public records requested. Ind. Code §5-14-3-9(b).

The School Town, by way of Ms. DeMuth's e-mail message did provide a response to your November 27th request within the twenty-four (24) hour period required under the APRA. This response, however, only indicated that Mr. Kokinda was no longer with the School Town. I agree that this response did not address your request for copies of public records; it merely informed you that Mr. Kokinda was no longer employed with the School Town. You did not, therefore, receive a timely response to your request of November 27, 2000 and this would, in my opinion, be considered a denial under the APRA.

As a further note, it is my opinion that a public agency's burden of responding to public records requests under the APRA includes an obligation to address those requests directly. Ind. Code §5-14-3-1. If Ms. DeMuth's response to your November 27th request had included the information she provided in her response to your formal complaint, that there are no contracts or benefit information for Mr. Kokinda, that would have certainly been an adequate response under the APRA. For this reasons, it is my advice to the School Town and other public agencies that any response to a public records request not only be timely, but also directly respond to the request.

CONCLUSION

It is my opinion that the School Town of Highland failed to respond within twenty-four (24)

hours after receiving your November 27th public records request for contract and benefit information for an interim assistant principal. This denial is actionable in court under Indiana Code section 5-14-3-9 of the Access to Public Records Act.

Sincerely,

Anne Mullin O'Connor

Enclosure

cc: Ms. Judith DeMuth, Asst. Superintendent
School Town of Highland
