

October 15, 2001

Ms. Brenda C. Roberts
122 High View Drive
Lawrenceburg, IN 47025

Re: *Advisory Opinion 01-FC-60*;

Alleged Denial of Access to Public Records by the Lawrenceburg Community School Corporation.

Dear Ms. Roberts:

This is in response to your formal complaint, which was received on September 21, 2001. You have alleged that the Lawrenceburg Community School Corporation ("School Corporation") has violated the Indiana Access to Public Records Act ("APRA,") Indiana Code chapter 5-14-3. Specifically, you allege that the School Corporation denied you access to public records in response to your August 24, 2001 request for copies. Mr. Ronald Rychener, Attorney for the School Corporation, responded in writing to your complaint. A copy of his response and the attachments are enclosed for your reference. For the reasons set forth below, it is my opinion that the School Corporation did not deny you access to public records with respect to your August 24th request because it is not a denial under the APRA to fail to produce nonexistent public records or to answer questions.

BACKGROUND

According to your complaint, on August 24, 2001, you delivered a public records request to the School Corporation for copies of (10) different items. You did receive a response from the School Corporation but claim that you were denied access to a number of the items requested.¹ You then filed your formal complaint with this Office alleging the School Corporation's response to your request violated the APRA because you made legitimate requests that were denied.

In his response, Mr. Rychener responded to the allegations raised in your complaint. It is the School Corporation's position that every item you requested for which the School Corporation actually had a record was provided to you.

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 Corporation

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 Corporation 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 my opinion that the APRA governs access to the public records of a public agency that exist; the failure to produce public records that do not exist or are not maintained by the public agency is not a denial under the APRA. Further, the APRA does not require public agencies to answer questions, merely to provide the requestor with the right to inspect and copy public records.

Indiana Code section 5-14-3-3 also provides in relevant part that "a request for inspection and copying must identify with *reasonable particularity* the record being requested." (Emphasis added.) While the phrase "reasonable particularity" appears to be clear, were it necessary to interpret the APRA to determine what the General Assembly intended this phrase to mean, courts would rely upon the common and ordinary meaning. *Crowley v. Crowley*, 588 N.E.2d 576, 578 (Ind. App. 1992). "Particularity" is defined as "the state of being particular rather than general." THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE (1981), 956.

Statutory interpretation rules require that one construe the phrase "reasonable particularity" in light of the entire APRA. *Deaton v. City of Greenwood*, 582 N.E.2d 882, 885 (Ind. App. 1991). Since the APRA favors disclosure and the burden of proof for the nondisclosure is on the public agency, the agency should contact the requestor for more information if it is necessary to respond to a request.

In your complaint, you refer to a number of the items you requested in your August 24th public records request as having been denied by the School Corporation. In the following paragraphs I have addressed each of those alleged denials, including the information provided by Mr. Rychener and my opinion regarding those alleged denials.

Your request: Names of speakers, dates they were in town, date they spoke, where they stayed, receipts from motels, restaurants, names of the person/s who ate the meals with the speakers, and name of person who signed for these charges.

My first reaction to this request is that since you did not provide any particular dates or events, the School Corporation could have legitimately asked for more specific information to fulfill your request. According to Mr. Rychener's response, however, it appears that the School Corporation did understand which speakers you meant in your request.² Mr. Rychener points out that you did in fact receive three (3) documents in response to this request that were the hotel invoices for three (3) different speakers. Two (2) of these invoices clearly show the dates of arrival and departure. On the third copy, arrival and departure information was obscured by another note, but the School Corporation did have a copy of the check used to pay for this charge. The School Corporation apparently did not have any restaurant receipts or information on who may have dined with these speakers.

It is my opinion that the School Corporation was only obligated to produce public records that

existed in response to this request. If the School Corporation did not have any public records responsive to parts of this request, this should have been communicated to you. The failure to produce nonexistent public records, however, is not a denial under the APRA and therefore, it is my opinion that the School Corporation did not violate the APRA with respect to this request.

Your request: Copies of Verizon bills, names of persons who have cell phones, and why the cell phones are necessary.

You claim that you did not receive the information you requested and that none of this request constituted a question. It is clear from your own correspondence to this Office, however, that the School Corporation did produce them. The names of persons who have the particular cell phones was written in the margin and Mr. Rychener also explained in his response that the "spare" telephone has now been assigned to someone. Since there is no obligation under the APRA to answer questions, and the "why the cell phones are necessary" statement could certainly constitute a question, it is my opinion that the School Corporation did produce to you the public records that existed at the time of your August 24th request. Consequently, it is my opinion that the School Corporation did not violate the APRA with respect to this request.

Your request: A breakdown (copy of receipts) of the credit card, who used it, why it was used and what it was used for.

According to your complaint, you claim that you did not receive this information and that your request did not constitute a question to the School Corporation. Mr. Rychener responded that you were in fact provided with copies of credit card statements and that the School Corporation does not have any receipts. You even provided with your complaint several copies of credit card statements that were provided to you by the School Corporation. As noted above, the School Corporation was not obligated to provide you with nonexistent public records nor to answer your questions, such as the who, why and what these credit cards were used for other than to produce the credit card statements. For these reasons, it is my opinion that the School Corporation did not violate the APRA with respect to this request.

Your request: What is the normal and customary way to order supplies for the School Corporation? Are teachers not required to requisition supplies? I would like copies of the receipts for school related items purchased and charged to the credit card.

You further allege that the School Corporation failed to provide you with the information you requested. Mr. Rychener responded that you had been provided with copies of credit card statements and that the School Corporation does not have receipts. Since the School Corporation is not required to answer questions under the APRA, then it is my opinion that there was no denial under the APRA for the failure to provide nonexistent public records, in this case, receipts that the Corporation does not have, to you.

On a final note, the School Corporation's response included copies of documents that were responsive to your request, but only a general handwritten statement at the top of your written request that:

We have addressed all requests for public records. We are not obligated to answer questions.

I suggest that for future requests the School Corporation state more clearly when there are no public records that satisfy a particular request. In this way, the requestor will have a better understanding of why he or she has not received any public records in response to a request.

CONCLUSION

It is my opinion that the Lawrenceburg Community School Corporation did not deny you access to public records with respect to your August 24, 2001 request. It is not a denial of access under the APRA not to produce public records that do not exist nor to fail to answer questions posed by a requestor.

Sincerely,

Anne Mullin O'Connor

Enclosure

cc: Mr. Ronald K. Rychener, Attorney
Lawrenceburg Community School Corporation

¹ The only specific references to these alleged denials are written in hand in the margins of a copy of your request. I will respond specifically to each of the items in the Analysis portion of this Opinion.

² This same issue arises with all of your requests, and since the School Corporation has not raised this as an issue with any of your requests, it will not be addressed any further in this Opinion.