

November 26, 2002

Mr. Peter Calderon  
2301 Ridgewood  
Highland, IN 46322

Re: *Advisory Opinion 02-FC-61*; Alleged Denial of Access to Public Records by the School Town of Highland.

Dear Mr. Calderon:

This is in response to your formal complaint, which was received on November 13, 2002. 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. Specifically, you claim that the School Town denied you access to a copy of an e-mail communication allegedly sent by Mr. Brad Meeder, Chairman of the Board for the School Town. Mr. Meeder responded in writing to your complaint and a copy of his response is enclosed.

For the reasons set forth fully below, it is my opinion that the School Town did not violate the APRA with respect to your November 7th request. You made your request to an individual member of the School Board who does not constitute a public agency under the APRA, and consequently is not subject to the requirements of the Act.

### BACKGROUND

According to your complaint, on November 7, 2002 you requested a copy of an e-mail communication that Mr. Meeder sent to Dr. Ulm, State Director of the NCA<sup>1</sup> chapter in Indiana. Your complaint states that you<sup>2</sup> were denied access to this public record by the School Town.

In response to your complaint, Mr. Bushemi stated that a response was sent via facsimile to you on November 8, 2002. He stated that a significant amount of time and labor was required to retrieve and assemble the requested public records. Mr. Bushemi also enclosed a copy of his November 25, 2002 letter to you that accompanied the copies you requested. It is Mr. Bushemi's position that there was no denial of access with respect to your request.

In his response to your formal complaint, Mr. Meeder stated that there was no e-mail communication to Dr. Ulm. Mr. Meeder, in his individual capacity, sent a letter to Dr. Ulm in response to a letter that Dr. Ulm sent to the School Town including some complaints against the School Board. Mr. Meeder attached this letter, for informational purposes, to an e-mail message he sent to the other School Board

members that included suggested language for motions to be made at a meeting that Mr. Meeder could not attend. A board member printed the e-mail communication and read from it at the meeting, but an administrator saw the printed e-mail and made a comment about the attachment, the letter to Dr. Ulm, at that public meeting. Mr. Meeder states that there never was an "e-mail" to Dr. Ulm, only the letter attached to the e-mail communication to the other board members. He further contends that his letter to Dr. Ulm was not a public record for the purposes of the APRA since it was sent by him as an individual and as such he did not violate the APRA by failing to provide the requested copy 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 Town is clearly a public agency for the purposes of the APRA. Ind. Code §5-14-3-2.

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). A public record is defined as follows:

*any writing, paper, report, study, map, photograph, book, card, tape recording, or other material that is created, received, retained, maintained, used, or filed by or with a public agency and which is generated on paper, paper substitutes, photographic media, chemically based media, magnetic or machine readable media, electronically stored data, or any other material, regardless of form or characteristics.*

Indiana Code § 5-14-3-2. [Emphasis added.] The general rule, therefore, is that a public agency is required to permit inspection and copying of public records under the APRA unless there is a valid statutory exception to disclosure.

You claim that the School Town of Highland denied you access to public records with respect to your November 7th request for a copy of a letter written from Mr. Meeder to Dr. Ulm. The School Town is clearly a public agency under the APRA and information maintained by the School Town would constitute public records under the Act. There is nothing in your complaint, however, that indicates that you even made a request to the School Town. For this reason, it is my opinion that the School Town did not violate the APRA with respect to your November 7th request for access to public records.

Apparently, you made a request directly to Mr. Meeder for a copy of his written communication to Dr. Ulm. Mr. Meeder as an individual is not a public agency for the purposes of the APRA. See, Ind. Code §5-14-3-2. Consequently, Mr. Meeder as an individual school board member is not subject to the APRA. For this reason, it is my opinion that Mr. Meeder did not violate the APRA by failing to provide you with a copy of the letter he wrote to Dr. Ulm. Certainly, individual school board members may

provide access to their records but since those individuals are not public agencies for the purposes of the APRA, there would be no obligation to do so. In response to your formal complaint, however, Mr. Meeder attached a copy of the letter in question and I have enclosed that for your information.

## CONCLUSION

It is my opinion that the School Town of Highland did not violate the APRA with respect to your November 7, 2002 request. An individual member of a school board is not a public agency for the purposes of the APRA, and therefore, he or she is not subject to the requirements of the APRA.

Sincerely,

Anne Mullin O'Connor

Enclosure

cc: : Mr. Brad Meeder, Board Chairman  
School Town of Highland

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<sup>1</sup> North Central Association.

<sup>2</sup> Your complaint is not specific about the nature of your request. Mr. Meeder told me by telephone this morning that it was your wife who left a telephone message for him requesting a copy of the e-mail communication. Technically the person who was denied access to public records must file the formal complaint under Indiana Code section 5-14-5-6(1). I will assume for the purposes of this Opinion that your wife's request was made on your behalf as well.