



STATE OF INDIANA

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October 22, 2026

Re: Complaint 26-FC-164
Alyssa Salmon (Complainant) v.
Indiana Department of Education (Respondent)

This advisory opinion is issued in response to the above-referenced complaint filed on March 30, 2026.

A Notice of Complaint, along with a copy of the complaint, was sent to the Respondent on April 9, 2026, requesting a formal response by May 8, 2026. A formal response, submitted by Phillip Gordon, General Counsel, on behalf of Respondent, was received in this office on April 22, 2026.

The complaint alleges that Respondent violated the Access to Public Records Act (APRA) when it failed to provide all requested documents.

ANALYSIS

The public policy of APRA states that “[p]roviding persons with the 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.” Indiana Code (IC) 5-14-3-1.

Respondent is a public agency for purposes of APRA; and therefore, subject to the requirements. IC 5-14-3-2(s). As a result, unless an exception applies, any person has the right to inspect and copy Respondent’s public records during regular business hours. IC 5-14- 3-3(a).

On January 19, 2026, Complainant filed an APRA request with Respondent, requesting:

“copies of any and all records received, generated, or maintained by the Indiana Department of Education that reference, relate to, or arise from correspondence concerning me, [Complainant], in my

capacity as a teacher, including but not limited to matters involving ILEARN testing scores.”

“This request specifically includes, but is not limited to:

- Any letter, correspondence, or written communication sent to the Indiana Department of Education regarding my ILEARN testing performance
- Any emails or electronic communications transmitting or referencing such correspondence
- Any attachments included with the correspondence
- Any internal memoranda, notes, summaries, or investigative records created as a result of the correspondence
- Records reflecting the date the correspondence was received and the actions taken in response.”

Respondent replied to Complainant on January 21, 2026, requesting that the request be narrowed and made reasonably particular. That same day, Complainant narrowed her request and provided further clarification.

Complainant provided narrowed and clarified her request the same day. And the updated request was confirmed by Respondent later that day.

On March 23, 2026, Respondent provided 21 documents in response to this request, which it considered to be the “full investigative record.”

These records included:

1. The December 3, 2025, Investigation Request Memorandum;
2. The January 14, 2026, final Investigation Determination;
3. All eleven responsive Data Forensics spreadsheets;
4. The Test Security Violation Report;
5. All responsive emails and supporting evidence;
6. The Initial Report of Misconduct;
7. Written statements from another individual and Complainant;
and
8. The C105 Test Security Investigation summary.

On March 24, 2026, Complainant filed a supplemental APRA request, requesting a copy of the original correspondent received November 21, 2025 and records submitted by the Diocese of Gary.

Respondent replied on March 24, 2026, confirming it received the email

request, but directed her to submit a formal request through its portal.

On March 26, 2026, Complainant submitted a formal request through the portal requesting: original correspondence received November 21, 2025 which initiated the investigation, identity of the sender of that communication, records submitted by the Diocese of Gary related to the investigation including: written statements, interview summaries, notes, transcripts, final reporting, findings, analysis, any supporting documentation, all records relied upon in reaching the January 14, 2026 determination.

On March 27, 2026, Respondent acknowledge the March 26, 2026 request and noted it,

“responded to these (January 19, 2026 and March 26, 2026) requests on March 23, 2026 and March 27, 2026. To the extent that there may be any overlap between the records sought in the previous two request, and your March 27 2026 request, all responsive records maintained by the IDOE have already been provided to you.”

It is unclear whether a copy of the initial IDOE complaint was provided in Respondent’s March 23, 2026, production. However, on March 27, Respondent provided documents including this initial IDOE complaint and associated information.

On March 27, 2026¹, Complainant filed an additional APRA request with Respondent but noted that she considered it to be a continuation of her January 19, 2026, request. This new request included, in summary:

1. Records reflecting verification of the anonymous complaint.
2. Interview documentation and supporting evidence.
3. Data analysis and forensic methodology.
4. Internal deliberations and evaluation of evidence.
5. Policies and standards applied.
6. Records previously withheld or referenced by not produced.

That same day, Respondent replied to Complainant, noting that it held no other responsive records than those already provided.

¹ This is the March 27, 2026 request referenced in the quoted email above.

Complainant emailed for clarification on March 27, 2026. Respondent replied on March 30, 2026, referring Complainant to the Indiana Assessment Policy Manual link which Respondent believes to satisfy part of the request. In addition, Respondent lists all the documents it has provided to the Complainant to satisfy the January 19, 2026 and March 26, 2026 requests. The email further specifies which specific requests were satisfied by the documents it listed. Finally, Respondent listed the requests for which it did not maintain responsive documents for. Respondent noted it considered all three APRA requests closed at this time.

Complainant alleges Respondent violated APRA in failing to produce certain records, including:

1. Diocese interview notes,
2. Records reflecting how student interview responses were interpreted,
3. Records concerning verification of the anonymous complaint, and
4. Records reflecting how evidence was weighed.

Respondent contends that it has provided all responsive records, and that no other responsive records exist.

This office has previously opined that a:

“public agency is not required to compile or create a record to satisfy a person’s request for information. Rather, the APRA requires that a public agency make available its current records.”

See Opinion of the Public Access Counselor 06-FC-196, 08-FC-113, 16-FC-273.

This office recently followed precedent on this matter. In the *Opinion of the Public Access Counselor 26-FC-028*, this office reiterated that it has long followed the reasoning that a public agency is not required to create or produce records that it does not have. *Opinions of the Public Access Counselor 03-FC-146, 05-FC-25, 10-FC-086, and 12-FC-328* support Respondent’s position that Respondent is not required to produce records that do not exist or create records to fulfill an APRA request. If Respondent provided all the records responsive to Complainant’s request, then the records request has been fulfilled. *Opinion of the Public Access Counselor 25-FC-112.*

This office is not empowered to compel Respondent to produce records it asserts do not exist, though this office notes that remedies exist under IC 5-14-3-9 if Complainant believes additional records are being withheld improperly.

As this office cannot compel the production of records, and Respondent asserts that all responsive records have been provided, this office opines that Respondent did not violate APRA.

CONCLUSION

This office finds that Respondent did not violate APRA as alleged in the complaint.

A handwritten signature in black ink, appearing to read "Brittney A. Long". The signature is stylized with a large initial "B" and a long, sweeping underline.

Brittney A. Long
Public Access Counselor