



STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

PUBLIC ACCESS COUNSELOR
HEATHER NEAL

Indiana Government Center South
402 West Washington Street, Room W460
Indianapolis, Indiana 46204-2745
Telephone: (317)233-9435
Fax: (317)233-3091
1-800-228-6013
www.IN.gov/pac

May 6, 2009

Diana Vice
4398 West County Road 700 North
Mulberry, Indiana 46058

Re: Formal Complaint 09-FC-104; Alleged Violation of the Access to Public Records Act by the Rossville Consolidated School District

Dear Ms. Vice:

This advisory opinion is in response to your formal complaint alleging the Rossville Consolidated School District ("School") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by denying you access to records. A copy of the School's response to the complaint is enclosed for your reference. It is my opinion the School did not violate the APRA.

BACKGROUND

You allege that you have requested from the School records related to roof leaks at the School. You include a copy of a letter from Superintendent Dr. James Hanna wherein Dr. Hanna denied you access to "copies of correspondence to or from Tremco/Weatherproofing Technologies regarding roof leaks, including reports, invoices, or emails relating to rook leaks & Tremco's assessment of same" on the basis that the School does not maintain any records responsive to your request. In the same letter, Dr. Hanna contended that you must specifically identify which records you seek. You allege that based on this interpretation a person cannot obtain access to records unless he or she knows the "magic words" that would yield the subject matter in a search. You allege the School has denied you access to public records in violation of the APRA. The present complaint was postmarked on April 20, 2009, and my office received it on April 22.

The School responded to the complaint by letter dated April 23 from Dr. Hanna. The School contends that when you submitted the original request on April 7, you did not specify start or end dates for the request. Dr. Hanna contends he specifically asked you to limit the date range to be helpful in the search for records. Since your request included the word "recent," Dr. Hanna reviewed previous requests from you and interpreted "recent" to mean since 2004. The School contends that using the date of 2004 as the starting point, the School finds no records of roof reports and related correspondence regarding roof

leaks. The School contends that “just because Mrs. Vice believes that we have these documents does not mean the school district actually does have them.”

ANALYSIS

The public policy of the APRA states, “[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.” I.C. § 5-14-3-1. The School is clearly a public agency for the purposes of the APRA. I.C. § 5-14-3-2(m). Accordingly, any person has the right to inspect and copy the public records of the School during regular business hours unless the public records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. I.C. § 5-14-3-3(a).

A “public record” means any writing, paper, report, study, map, photograph, book, card, tape recording or other material that is created, received, retained, maintained or filed by or with a public agency. I.C. § 5-14-3-2. Nothing in the APRA requires a public agency to *develop* records or information pursuant to a request. The APRA requires the public agency to *provide access* to records already created. If the School does not maintain any records responsive to your request, the School has not violated the APRA by not creating records responsive to your request.

The APRA requires a request to identify with reasonable particularity the record being requested. I.C. § 5-14-3-3(a). “Reasonable particularity” is not defined in the APRA. “When interpreting a statute the words and phrases in a statute are to be given their plain, ordinary, and usual meaning unless a contrary purpose is clearly shown by the statute itself.” *Journal Gazette v. Board of Trustees of Purdue University*, 698 N.E.2d 826, 828 (Ind. Ct. App. 1998). Statutory provisions cannot be read standing alone; instead, they must be construed in light of the entire act of which they are a part. *Deaton v. City of Greenwood*, 582 N.E.2d 882 (Ind. Ct. App. 1991). “Particularity” as used in the APRA is defined as “the quality or state of being particular as distinguished from universal.” *Merriam-Webster Online*, www.m-w.com, accessed July 18, 2007.

Generally, I advise public employees and officials that if they can determine from the request what records a person is seeking, the request was likely made with reasonable particularity. If, though, the request is so broad that it can be interpreted differently by different people, the request is likely not particular. I generally advise requestors to limit the request as much as possible to make it clear what records are being sought. To that end, I advise requestors to limit a request by one or more of the following: date; subject matter; creator, sender, or recipient; and title of a form, among others. Any identifying information will help an agency to locate the specific records a person seeks and will often reduce the amount of time it will take the agency to produce records. Here, your original request was broad, in my opinion. The School limited the request by searching only for records dating back to 2004. By limiting the request by date, this made the request more reasonably particular.

The School contends no records exist which are responsive to your request. You contend that because of the size and scope of the project, records must exist. While the APRA requires an agency to protect records from loss, destruction, or mutilation (See I.C. § 5-14-3-7(a)), nothing in the APRA requires an agency to create any particular records. So while you contend that records *should* exist which are responsive to your request, the School has not violated the APRA by not creating, receiving, retaining, maintaining, or filing records which would be responsive to your request. The School has violated the APRA only if the School does maintain records responsive to your request and has denied you access to those without the authority to do so. I do not have enough evidence to find this to be the case.

CONCLUSION

For the foregoing reasons, it is my opinion the School has not violated the APRA.

Best regards,



Heather Willis Neal
Public Access Counselor

Cc: Dr. James Hanna, Rossville Consolidated School District