



# STATE OF INDIANA

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February 11, 2009

Ashley Smith  
The News-Sentinel  
600 West Main Street  
Fort Wayne, Indiana 46802

*Re: Formal Complaint 09-FC-22; Alleged Violation of the Access to Public Records Act by Fort Wayne Community Schools*

Dear Ms. Smith:

This advisory opinion is in response to your formal complaint alleging Fort Wayne Community Schools ("FWCS") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by denying you access to records. A copy of FWCS's response to the complaint is enclosed. In my opinion FWCS has not violated the APRA.

## BACKGROUND

You filed the present complaint on January 13, 2009. You allege that you have requested from FWCS the packet of materials the members of the FWCS Board of Trustees ("Board") receives prior to each meeting. You have requested the materials be provided to you by the Thursday prior to each Monday meeting. You allege you were told a majority of the packet is opinion and as such will not be provided. You allege the Board has denied you access to these records.

FWCS responded to the complaint by letter dated January 29 from Public Information Officer Krista Stockman. FWCS contends the packet contains only two types of documents – the Board meeting agenda and the superintendent's opinions and comments for each agenda item. FWCS contends the agenda is provided to the media contemporaneously with the notice of the meeting. Regarding the superintendent's opinion documents, FWCS contends they are not finalized until just prior to the meeting and may be modified up until the time the meeting begins. FWCS contends the documents are opinion of the superintendent and the sole purpose of the documents is decision-making. FWCS contends that a summary of each item on the agenda is provided at the time the meeting notice is sent. Further, FWCS contends that at the meeting you (as well as other members of the media) are provided with the Board packet, but personnel-related documents are withheld until after Board action.

## 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. FWCS is 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 FWCS 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).

I have previously addressed an issue nearly identical to the present issue in *Opinion of the Public Access Counselor 07-FC-330*. There, the complainant contended he should be provided a copy of a Board packet in advance of the meeting. In *Opinion 07-FC-330*, I wrote the following:

Regarding the board packet materials, all records of the Corporation are presumed to be public records unless an exception to disclosure is present. I.C. § 5-14-3-1; I.C. § 5-14-3-3. If you submit a request to the Corporation for each board packet after it has been created, the Board has the duty to respond to your request and either allow you to inspect and copy the records or provide you with the statutory provisions excepting disclosure of certain information. I.C. § 5-14-3-3; I.C. § 5-14-3-9. The Corporation has indicated a board packet might contain information deemed confidential by federal law or might contain information excepted from disclosure under the APRA. In each circumstance, the Board would need to respond to your request with the statutory authority excepting disclosure.

Regarding your request that the board packet be made available to you at the time of each Board meeting, the APRA does not provide a time by which records must be provided in response to a request. This office has long said that records must be produced within a reasonable amount of time based on the facts and circumstances. . . I would not assume it would always be reasonable to expect the packet to be provided in advance of the meeting. If, for instance, the packet were finalized close to the meeting time and the packet had not yet been reviewed for disclosable and nondisclosable information, it is my opinion it would be reasonable for the Corporation to provide the packet at some point after the meeting.

*Id.*, available at [www.in.gov/pac](http://www.in.gov/pac).

In the present matter, FWCS contends the Board packet may change at any point until the beginning of the meeting. In this matter as in *Opinion 07-FC-330*, my opinion remains that FWCS is required to provide copies of Board packet materials unless an exception to disclosure applies. And it remains my opinion that nothing in the APRA requires FWCS to provide the records by the time you have demanded or in advance of

the meeting when doing so would be impractical or would constitute a material interference with the regular discharge of duties. *See* I.C. § 5-14-3-7(a).

Regarding FWCS's contention that the majority of the Board packet materials are deliberative material, FWCS bears the burden of proof to sustain the denial. FWCS contends the materials are the superintendent's opinion and are communicated for the purpose of decision-making. If both conditions are met, those records would be excepted from disclosure pursuant to the deliberative materials exception found in I.C. § 5-14-3-4(b)(6). The Board is required, though, to provide any materials not inextricably linked to the non-disclosable materials. *See Unincorporated Operating Div. of Indianapolis Newspapers v. Trustees of Indiana Univ.*, 787 N.E.2d 893, 914 (Ind. Ct. App. 2005).

### CONCLUSION

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

Best regards,



Heather Willis Neal  
Public Access Counselor

Cc: Krista Stockman, Fort Wayne Community Schools