



# STATE OF INDIANA

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March 2, 2009

William Groth  
c/o AFSCME Council 62  
Fillenwarth Dennerline Groth & Towe, LLP  
429 East Vermont Street, Suite 200  
Indianapolis, Indiana 46202

*Re: Formal Complaint 09-FC-32; Alleged Violation of the Access to Public Records Act by the Board of School Commissioners of the City of Indianapolis*

Dear Mr. Groth:

This advisory opinion is in response to your formal complaint alleging the Board of School Commissioners of the City of Indianapolis ("Board") violated the Access to Public Records Act ("APRA") (Ind. Code §5-14-3) by not producing the records you requested in a reasonable period of time. It is my opinion the Board has not violated the APRA.

## BACKGROUND

You filed a complaint with this office dated January 29, 2009. You allege that on December 1, 2008 you sent to the Board a letter seeking access to certain records maintained by the Board. You received a response from the Board dated December 9. You have included copies of both letters. In the December 9 letter, the Board's counsel indicated the Board would produce the records but it would take several weeks to retrieve and copy the records because an employee would have to work in the retrieval and copying around her regular duties. You filed this complaint alleging the more than six weeks the Board had taken at that time was unreasonable. You contend the request was narrow, covered records less than one year old, and covered records which should not need to be edited to delete nondisclosable material.

The Board responded to your complaint by letter dated February 6 from attorney Roberta Sabin Recker. The Board contends there was no unreasonable delay. Ms. Recker indicates she notified you on February 5 that the records were ready to be picked up at your convenience. The Board contends the records had been reviewed, collected, and copied by one of only two employees in the Board Secretary's office. The Board contends that given her other job duties, the volume of records, and the holidays plus the 2 ½ week winter break, the amount of time spent responding to the request was not unreasonable. Further, the Board indicates that during

the time the employee was processing the request, she was also processing a similar request made by one of the clients you identified in the request. Finally, the Board contends that it did notify you, with a timely response, of the delay because of limited staff.

## 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 Board 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 Board 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 request for records may be oral or written. I.C. §§ 5-14-3-3(a), 5-14-3-9(c). If the request is delivered by mail or facsimile and the agency does not respond to the request within seven days of receipt, the request is deemed denied. I.C. § 5-14-3-9(b).

A response could be an acknowledgement that the request has been received and information regarding how or when the agency intends to comply. There are no prescribed timeframes when the records must be produced by a public agency. A public agency is required to regulate any material interference with the regular discharge of the functions or duties of the public agency or public employees. I.C. § 5-14-3-7(a). Section 7 does not, however, operate to deny to any person the rights secured by section 3 of the APRA. I.C. § 5-14-3-7(c). My predecessors and I have opined that records must be produced within a reasonable period of time, based on the facts and circumstances. Consideration of the nature of the requests (whether they are broad or narrow), how old the records are, and whether the records must be reviewed and edited to delete nondisclosable material are necessary to determine whether the agency has produced records within a reasonable timeframe.

The burden lies with the public agency to show the time period for producing documents is reasonable. *Opinion of the Public Access Counselor 02-FC-45.*

Here, your initial request was sent to the Board on December 1, 2008. Assuming the Board received your request on or after December 2, the Board's response on December 9 was timely. The Board indicated in the December 9 response that it would take several weeks to collect, review, and copy the records.

It is my opinion the Board has demonstrated it worked to produce the documents you requested in a reasonable amount of time. The Board did not provide an indication to me of the number of documents reviewed and provided pursuant to the request but does cite the volume of records as one cause for the delay. Further, the Board contends it needed to review the records. While I understand your argument that none of the records would need to be edited to redact nondisclosable material, it is my understanding that several agencies review all records prior to disclosure to be sure they are not disclosing any records or information they may not disclose. I

cannot condemn this routine review, as there are implications for releasing records which are confidential or otherwise nondisclosable.

The Board also cites the holiday season as well as the 2 ½ winter break which fell shortly after the Board received your request. Certainly nothing in the APRA would require an agency to work during non-business hours to produce records pursuant to a request.

I do not believe the Board took an unreasonable amount of time to collect, review and reproduce the records. My opinion is based in part, though, on the Board's contention that volume of records was one consideration. My opinion would certainly change if the number of records requested were small and the records were easy to locate, review and reproduce.

I would offer, though, that this office has often suggested a public agency make portions of a response available from time to time when a large number of documents is being reviewed for disclosure. See *Opinion of the Public Access Counselor 06-FC-184* and *Office of the Public Access Counselor Informal Inquiry Response May 10, 2006*. This further displays the effort the agency is making to provide transparency in government and provide access to public records. Sometimes this is not feasible based on the way the agency is processing the request, but I would encourage the Board to consider the suggestion in the future.

#### CONCLUSION

For the foregoing reasons, it is my opinion the Board of School Commissioners of the City of Indianapolis has not violated the APRA.

Best regards,



Heather Willis Neal  
Public Access Counselor

Cc: Roberta Sabin Recker, Baker & Daniels LLP