



# STATE OF INDIANA

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March 16, 2009

Daniel Sulkoske  
474 Southpoint Circle  
Brownsburg, Indiana 46112

*Re: Formal Complaint 09-FC-54; Alleged Violation of the Access to Public Records Act by Avon Community School Corporation*

Dear Mr. Sulkoske:

This advisory opinion is in response to your formal complaint alleging Avon Community School Corporation ("Corporation") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by denying you access to records. It is my opinion the Corporation has taken an unreasonable amount of time to produce the records or further communicate with you regarding the status of the request.

## BACKGROUND

You submitted a request for access to the records to the Corporation on September 2, 2008. The Corporation responded to the request by letter dated September 3, wherein the Corporation indicated it would gather the records and notify you of the copy costs. You sent a follow-up request on November 25 and allege you have made several telephone calls to the Corporation. You allege you have received no copies of records or further correspondence as of February 12, 2009, the date of your complaint.

My office sent a copy of the complaint to the Corporation and invited the Corporation to respond to the complaint. To date we have not received a response.

## 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 Corporation 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 Corporation 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). However, section 7 does not operate to deny to any person the rights secured by section 3 of the APRA. I.C. § 5-14-3-7(c). Former public access counselors 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.

Here, the Corporation received your request by mail and responded to it within one day. Pursuant to I.C. § 5-14-3-9(b), the response was timely. Since September 3, though, the Corporation has not provided you any additional information or responded to your inquiries. It has now been more than six months since the date of your request. The Corporation has neither provided you records nor provided you of an indication as to why it is taking so long to provide access to the records. Further, the Corporation did not respond to the complaint at my office's invitation to do so, so I have no information regarding the reason for the delay. As such, I cannot find six months to be a reasonable period of time to produce the records you have requested.

#### CONCLUSION

For the foregoing reasons, it is my opinion the Corporation has violated the APRA by taking an unreasonable amount of time to produce the records you have requested or further communicate with you regarding the status of the request.

Best regards,



Heather Willis Neal  
Public Access Counselor

Cc: Timothy Ogle, Avon Community School Corporation