

August 27, 2003

Ms. Bobbie Bridgland  
409 S. Race St.  
Princeton, IN 47670

Mr. Robert A. Shaw  
2308 Lake Rd.  
Princeton, IN 47670

Re: 03-FC-64; *Alleged Violation of the Indiana Open Door Law and the Indiana Access to Public Records Act by the North Gibson School Corporation*

Dear Ms. Bridgland and Mr. Shaw:

This is in response to your formal complaint, which was received on July 30, 2003. You have alleged that the Board of the North Gibson School Corporation ("School Board") has violated the Indiana Open Door Law ("ODL")<sup>1</sup> Indiana Code chapter 5-14-1.5 and the Indiana Access to Public Records Act ("APRA"). Specifically, you contend that the Employee Advisory Committee ("Committee") failed to keep proper memoranda during its executive session. Additionally, you contend that you were denied access to public records in a letter dated July 17, 2003. Mr. L. Matthew Nixon, Attorney for the School Corporation, provided a written response to your complaint. A copy of his response is enclosed for your reference. For the reason set forth below, it is my opinion that the School Board did fail to keep proper memoranda of its meetings as required under the ODL. However, it is my opinion that the School Board did not deny you access to public records in violation of the APRA.

#### BACKGROUND

In your complaint you allege that a Committee was appointed by the president of the School Board. Further you allege that the Committee met several times for the purpose of screening candidates for several positions within the school corporation and

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<sup>1</sup> Although you make reference to a secret ballot being taken during one of the advisory committee meetings you failed to provide any facts surrounding that allegation including the date on which the vote was taken or the date you discovered that the vote was taken, therefore, this matter will not be addressed.

during the course of those meetings failed to keep proper minutes as is indicated in the denial letter from Mr. Nixon submitted as part of your complaint.

In his response Mr. Nixon stated that School Board President David Oldham appointed a temporary Committee for the purpose of screening candidates for the School Corporation and make recommendations to the School Board. According the Mr. Nixon the meetings were advertised and the meetings were closed to the public because of the content of the meetings, interviewing prospective employees. Mr. Nixon did, however, admit that records pertaining to the advisory committee meetings were not kept.

## ANALYSIS

### **Indiana Open Door Law**

The intent and purpose of the ODL is that “the official action of public agencies be conducted and taken openly, unless otherwise expressly provided by statute, in order that the people may be fully informed.” Ind. Code § 5-14-1.5-1. Therefore, “all meetings of the governing bodies of public agencies must be open at all times for the purpose of permitting members of the public to observe and record them.” Ind. Code § 5-14-1.5-3. A governing body is defined in relevant part as “any committee appointed directly by the governing body or its presiding officer to which authority to take official action upon public business has been delegated.” Ind. Code § 5-14-1.5-2(b)(3).

According to your complaint and Mr. Nixon’s response Mr. Oldham appointed a temporary Committee for the purpose of screening potential employees and making recommendations regarding those applicants to the School Board. It is my opinion that this Committee is a governing body subject to the provisions of the ODL. Consequently, the Committee must keep memoranda for its public meetings and executive session. During the course of a meeting the following memoranda shall be kept:

- (1) The date, time, and place of the meeting.
- (2) The members of the governing body recorded as either present or absent
- (3) The general substance of all matters proposed, discussed, or decided.
- (4) A record of all votes taken, by individual members if there is a roll call.
- (5) Any additional information required under IC 5-1.5-2-2.5 or IC 20-12-63-7.

Ind. Code § 5-14-1.5-4. However, if an executive session is held the governing body is not required to include “[t]he general substance of all matters proposed, discussed, or decided.” *Id.* Rather the memoranda “must identify the subject matter considered by specific reference to the enumerated instance or instances for which public notice was given.” Ind. Code § 5-14-1.5-6.1(d). Additionally, there should not be a record of all votes taken because “final action must be taken at a meeting open to the public.” Ind. Code § 5-14-1.5-6.1(c). “The memoranda are to be available within a reasonable period of time after the meeting for the purpose of informing the public of the governing body’s

proceedings.” Ind. Code § 5-14-1.5-4. Therefore, it is my position that it is a violation of the ODL for a governing body to neglect keeping memoranda as set forth in Indiana Code section 5-14-1.5-4.

### **Indiana Access to Public Records Act**

You additionally contend that you were denied access to public records, the memoranda, in violation of the APRA. The public policy of the APRA states that “[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.” Ind. Code § 5-14-3-1. The School Corporation is clearly a public agency for the purposes of the APRA. Ind. Code § 5-14-3-2. Accordingly, any person has the right to inspect and copy the public records of the School Corporation during regular business hours unless the public records are excepted from disclosure as confidential or otherwise nondisclosable under Indiana Code section 5-14-3-3(a). It is my opinion that the APRA governs access to the public records of a public agency that exists; the failure to produce public records that do not exist or are not maintained by the public agency is not a denial under the APRA. According to your complaint and Mr. Nixon’s response, no records were kept regarding the meetings of the Committee. Therefore, it is my opinion that although it may violate the ODL for a governing body to fail to keep memoranda, it is not a violation of the APRA for a public agency to fail to produce public records that do not exist.

### CONCLUSION

It is my position that it is a violation of the ODL for a governing body to neglect keeping memoranda as set forth in Indiana Code section 5-14-1.5-4. However, it is also my opinion that it does not violate the APRA for a public agency to fail to produce public records that do not exist.

Sincerely,

Sandra K. Barger  
Acting Public Access Counselor

Cc: Mr. Matt Nixon, Attorney  
North Gibson School Corporation