

September 1, 2004

Ms. Mary Oberthur
225 West 246th Street
Sheridan, IN 46069-9312

Re: Advisory Opinion 04-FC-140; Alleged Violation of Access to Public Records Act by the Marion-Adams Community School Corporation

Dear Ms. Oberthur:

This is in response to your formal complaints alleging that Marion-Adams School Corporation (“School”) violated the Access to Public Records Act (“APRA”), I.C. §5-14-3. Specifically, you allege that the School failed to provide documents to you in a timely manner, and that the fee charged for copies of public records was not uniform. Dr. Patrick Mark, Superintendent, responded on behalf of the School, a copy of which is enclosed for your reference. I find that the Marion-Adams School Corporation did not violate the Access to Public Records Act with regard to the timeliness of its production of records. However, it is my opinion that to the extent that the School failed to advise you that it did not maintain a record regarding classroom size, the School violated the Access to Public Records Act. I am unable to make a determination with respect to the uniform application of the copying fee.

BACKGROUND

On July 2, 2004, you picked up documents produced from a prior records request, and were charged \$5.90, or \$.10 per page, for those documents. You later discovered that other persons requesting records had been charged \$.07 per page.

On July 2, 2004, you also submitted several written requests for records to the Marion-Adams School Corporation. Specifically, you requested: a copy of the School’s fee schedule for public records; a list of the School’s positions and personnel; a list of the positions proposed, posted, or to be posted; a list of classroom use, including room location and size; Dr. Mark’s superintendent training and conferences; and plans for disabled and pre-first grade students. In a letter dated July 9, 2004¹, the School advised

¹ Although not raised as an allegation in your complaint, I note that the School’s response to your written, hand-delivered request for documents was dated July 9, 2004, seven (7) days after you submitted your request. Pursuant to I.C. §5-14-3-9(a), a response made in person, whether orally or in writing, must be responded to within twenty-four (24) hours of the receipt of that request. The July 9, 2004 letter may have not been the first written response, but I would caution the School to respond within twenty-four (24) hours

you that the office was extremely busy preparing for school to start in August, but that they would fulfill your records request as soon as possible. Having not yet received the documents you requested, you filed a formal complaint with this Office on August 2, 2004. Your complaints allege that the School's production of the records you requested was not timely and that the copying fee assessed by the School is not applied uniformly. I forwarded a copy of your complaints to Dr. Mark.

In a telephone conversation on August 31, 2004, you stated that on August 16, 2004, you received all documents from Dr. Mark except the fee schedule for public records and the room size and location for the middle school, high school, and pre-first grade classes. You confirm that Dr. Mark did send you a fee schedule on August 16, 2004, but that it was the fee schedule for book rentals, not for copying fees. However, you verified that at a later date, you received the fee schedule. At that time, you still had not received the room size information. Over the course of several telephone conversations with my office, Dr. Mark confirmed that while the School had documents regarding the room size and location of the elementary school as a result of a prior project, the School does not normally maintain such documents.

ANALYSIS

Timeliness of Record Production

The School is a public agency for purposes of the Access to Public Records Act. A timely response to a record request does not mean that the School must produce the responsive records within that time. Rather, production or inspection of the records must only occur within a reasonable time of the request.

“There are practical reasons for such a rule. A public agency may be able to produce public records immediately in some cases, but more time may be required for production based on the nature and circumstances surrounding the public agency or regarding the request. These include such factors as whether the public agency is a full time agency or has a limited or part-time staff, or whether special circumstances within the agency or at the time of the request are already depleting the limited resources of the agency.” *Opinion of the Public Access Counselor 04-FC-31.*

Interpreting the public access laws to require public agencies to produce records within a specific period of time would have the effect, in some cases, of requiring public agencies to stop activity on all other matters in order to provide the records requested. While providing information is an essential function of public agencies, the Access to Public Records Act also specifically provides that public agencies shall regulate any material interference with the regular functions or duties of their offices. I.C. §5-14-3-1; I.C. §5-14-3-7(a) *Opinion of the Public Access Counselor 04-FC-50.*

You submitted your request to the School on July 2, 2004, and you received, by August 16, 2004, all information requested with the exception of the correct fee schedule and the room size and location information for the middle school, high school, and pre-first grade classes. Given the fact that the School was preparing for the start of the school

year, that many of the School's personnel were on vacation during that time, and the size of the document request, it is my opinion that the timeliness of the School's production of documents was not unreasonable.

The Access to Public Records Act does not require an agency to produce a document it does not have; however, in this case, if the School does not maintain that document, the School should have advised you of that fact. Therefore, to the extent that the School failed to inform you that you would not be provided a copy of documents regarding room size and location because they do not exist, I find that the School violated the Access to Public Records Act.

Copy Fee

Indiana Code §5-14-3-8(d) provides that the fiscal body or the governing body of a public agency shall establish a fee schedule for copying documents. The fee may not exceed the actual cost of the copying. "Actual cost" means the cost of paper and the per-page cost for use of copying equipment. Indiana Code §5-14-3-8(d) also provides that the fee must be uniform throughout the public agency and uniform to all purchasers. It is not a violation for an agency to waive the fee so long as this is done in a uniform manner. *Opinion of the Public Access Counselor 01-FC-31.*

You do not allege that the \$.10 copy fee charged to you was a violation of the APRA. Rather, you contend that the School has failed to charge that amount uniformly as required under I.C. §5-14-3-8(d). I have no information regarding the policy or basis under which the School waives or reduces its copying fee. Therefore, I am unable to make a determination as to whether that waiver or reduction has been applied uniformly. However, if the School waives the copying fee in a non-uniform manner, it would be a violation of the Access to Public Records Act.

CONCLUSION

For the foregoing reasons, I find no violation of the Access to Public Records Act with respect to the timeliness of the School's production of documents. However, it is my opinion that to the extent that the School failed to advise you in writing that it did not maintain a record regarding classroom size, the School violated the Access to Public Records Act. I am unable to make a determination with respect to the uniform application of the copying fee.

Sincerely,

Karen Davis
Public Access Counselor

cc: Dr. Patrick Mark; w/out enclosures