

November 22, 2004

Martin L. Hensley  
15 Wood Street  
Greenfield, IN 46140

*Re: Formal Complaint 04-FC-201; Alleged Violation of the Access to Public Records Act by the Metropolitan School District of Washington Township*

Dear Mr. Hensley:

This is in response to your formal complaint alleging that the Metropolitan School District of Washington Township ("School District") violated the Access to Public Records Act ("APRA") by charging you an excessive copying fee and not disclosing certain records. I find that the School District may have charged you in excess of the copy fee allowed under APRA.

#### BACKGROUND

Your complaint, filed on October 21, arises from the request for documents you sent to the School District on September 17. After reviewing the documents that were produced for you, you filed this complaint, alleging that you were charged for 217 copies of records at the rate of \$.25 per page, for a total of \$54.21. You also allege that the School District does not uniformly apply its copying charge, allowing some groups to receive copies at no charge (without specifying what group). It is not clear from your complaint, but you appear to allege that the School District has omitted a Forfeiture Notice sent to WJEL, the School District's radio station, from the FCC. You believe this notice should be in the WJEL Public Inspection File, but when you specifically requested to see the Public Inspection File, the receptionist stated that the file was not available. Finally, you ask what type of entity the School District is under Indiana law.

I sent the School District a copy of your complaint. The School District's Director of Business and Legal Services, Mr. William Hammel responded. I enclose the response for your reference.

## ANALYSIS

Any person may inspect and copy the public records of a public agency during the agency's regular business hours, unless an exception to disclosure applies. IC 5-14-3-3(a). You have raised several claims under APRA, which I discuss in the following sections.

### *Copying Charge*

You have complained that the School District overcharged you for records. Although you chiefly complain that the cost per page is excessive and is not uniform throughout the agency, you also seem to take issue with the number of pages you were charged for. Some of your concern is that the agency gave you duplicative material. The School District counters that in the rush to get your copies to you at the time you showed up in their office, and with the malfunctioning of the copy machine, a few blank pages may have been the result. Also, you may believe that some of the e-mails are duplicative because they contain all the responsive replies in a string of communications. You do not specify the number of pages you believe you were overcharged because of these problems, but I believe that to the extent you were charged for blank pages, you would be entitled to a credit or offset for those charges. In terms of the e-mails, I do not believe that your complaint is meritorious; the School District was obliged to provide you every message it had in response to your request.

With respect to the per page copying charge, the School District has responded that the School District has studied the cost of copying documents, has determined it to be as high as \$.31 per page, and has "established a practice" of charging \$.25 per page. Mr. Hammel has not stated whether the School Board has formally adopted this fee, and whether the fee study assumed that the "actual cost" of copying was consistent with the APRA's definition of "actual cost," which is the cost of paper and the per-page cost for use of the copying equipment. IC 5-14-3-8(d). If the fee was not adopted by the School Board as the governing body of the School District, it would not have been appropriate to charge you under IC 5-14-3-8(d). I also express doubt, just as I did in 04-FC-100, whether the actual cost of copies could be \$.25 per page. Unless the School Board adopted the fee schedule and can show that the actual cost of copying is \$.25 per page, the School District has charged you an excessive copying fee. Also, the fee must be applied uniformly throughout the School District and uniformly to all purchasers of copies. IC 5-14-3-8(d). Uniform application of the copying fee is a matter in dispute, and I decline to make any factual finding regarding whether the School District has a practice of charging different rates to different groups.

### *Missing FCC Document*

You have also complained that the School District did not include a Notice of Forfeiture that would have been issued by the FCC to WJEL. You believe such a document exists because part of the School District's response included WJEL's response to the FCC Forfeiture Notice. Mr. Hammel's response does not seem to cover this particular document, but he does challenge your right to use a procedure outside the FCC complaint procedures to inspect the FCC Public Inspection File. The fact that WJEL maintains the Public Inspection File in accordance with FCC regulations does not mean that the file is not subject to disclosure under APRA. *See*

*Opinion of the Public Access Counselor 04-FC-159.* APRA applies to public records maintained by WJEL as a unit of the Metropolitan School District of Washington Township, a public agency. IC 5-14-3-2. Also, if federal regulations make certain information in the file confidential, any denial of disclosure would have to contain the explicit federal statutory authority requiring the School District to maintain its confidentiality. IC 5-14-3-9(c)(2). This is not likely here, where the file's name betrays its disclosable nature.

In any event, if the School District has a document that is responsive to your request--a Notice of Forfeiture directed to WJEL from the FCC--it must disclose it to you or provide its authority for not disclosing it. Any denial of the record would be a violation of the Access to Public Records Act.

*Question about Entity*

You also asked what type of legal entity the School District is. Under IC 20-5-1-3(a), the School District is a school corporation because it is a metropolitan school district.

CONCLUSION

I find that the School District may have charged you an excessive copy fee under APRA. Also, to the extent that the School District maintains a record in its WJEL Public Inspection File or elsewhere that is responsive to your request, and it failed to disclose it to you, it denied you a record in violation of APRA.

Sincerely,

Karen Davis  
Public Access Counselor

cc: Mr. William D. Hammel