

December 14, 2005

*Sent Via Facsimile*

Clifford W. Shepard  
2325 West Washington Street  
Indianapolis, IN 46222-4256

*Re: Formal Complaint 05-FC-236; Alleged Violation of the Access to Public Records Act by the Greenwood Community School Corporation*

Dear Mr. Shepard:

This is in response to your formal complaint alleging that the Greenwood Community School Corporation ("School") violated the Access to Public Records Act by failing to give you the public portion of personnel files of two school teachers at Greenwood Middle School. I find that the School initially denied you a record in violation of the Access to Public Records Act.

#### BACKGROUND

On November 7, 2005, you requested the public portion of the personnel files of Sheri Haag and Karen Hill, who are school teachers at Greenwood Middle School. You requested these records of behalf of Lisa Karus, on whose behalf you filed your complaint with the Public Access Counselor. You allege that on or about November 8, Dr. David Edds told you that he had received your request, but believed that the records were not public. On November 14, Dr. Edds telephoned your office and again reaffirmed his belief that the personnel files were not public. Dr. Edds also indicated, you allege, that there is no time limit for complying and that he would contact the school's attorney.

I sent Dr. Edds a copy of your complaint. His written response is enclosed for your reference. Dr. Edds stated that the information from the public portion of the personnel files was sent to you on November 23, 2005. He also stated that the request was initially denied for two reasons. The first reason was that the Greenwood Middle School principal had believed that the issue had been resolved after conferring with Ms. Karus. Dr. Edds also explained that you had

asked for information about specific courses taken by the teachers, necessitating the School's evaluating whether a transcript is disclosable.

Dr. Edds stated in his letter and in a telephone conversation with me that the Greenwood Community School Corporation at all times intended to comply with the Access to Public Records Act.

## ANALYSIS

Any person may inspect and copy the public records of any public agency, except as provided in section 4 of the Access to Public Records Act ("APRA"). Ind. Code 5-14-3-3(a). The School is a public agency under the APRA. IC 5-14-3-2. If a public agency receives a request for a record by mail, facsimile, or e-mail, it is required to respond within seven (7) days. A response could be an acknowledgment of receipt of the request, and some indication of when or how the agency intends to comply. If a request for records is in writing, the request may be denied by the public agency if the denial is in writing, and includes a statement of the specific exemption or exemptions authorizing the withholding of the record, and the name and title or position of the person responsible for the denial. IC 5-14-3-9(c).

A personnel file of a public employee may be withheld from disclosure at the discretion of the agency, but some information from a personnel file must be disclosed. IC 5-14-3-4(b)(8). You requested the "public portion" of the personnel file. I assume that you requested the information that is required to be disclosed under IC 5-14-3-4(b)(8):

- “(A) the name, compensation, job title, business address, business telephone number, job description, education and training background, previous work experience, or dates of first and last employment of present or former officers or employees of the agency;
- (B) information relating to the status of any formal charges against the employee; and
- (C) information concerning disciplinary actions in which final action has been taken and that resulted in the employee being disciplined or discharged.

However, all personnel file information shall be made available to the affected employee or his representative. This subdivision does not apply to disclosure of personnel information generally on all employees or for groups of employees without the request being particularized by employee name.”

IC 5-14-3-4(b)(8)(A)-(C).

To the extent that the School stated it would deny you all of the personnel file, the School violated the Access to Public Records Act. Personnel file information listed above must be disclosed under the APRA. Also, a denial of your written request should have been in writing with citation to the specific exemption authorizing the withholding of the record. However, as I have said, no exemption would apply to the "public portion" of a personnel file.

A public agency is not required to produce records within a set period of time; the APRA is silent with respect to the time within which an agency must produce a record. However, the public agency should produce the record within a reasonable period of time, given all the facts and circumstances. Here, it appears that the School produced the required information from the personnel files on November 23, two weeks and two days after you had requested it. Some of the lapse of time is accounted for by the School's need to determine whether the teachers' transcripts are disclosable. This is somewhat understandable, because grade transcripts obtained as part of a licensure process are confidential. IC 5-14-3-4(a)(7).

However, the Office of the Public Access Counselor has strongly suggested that public agencies disclose that part of the information or record that is clearly disclosable, without waiting for a final determination as to the questioned portion of records. This situation is clearly presented here, where the only part of the personnel files in question was the transcripts. In my opinion, there was a lengthy delay in producing the personnel file information. After speaking with Dr. Edds, I am assured that the School did not intend to circumvent the APRA, and every attempt will be made to comply in the future. Also, it appears that Dr. Edds has provided the records. Nevertheless, the denial of the record that occurred initially was a violation of the APRA.

#### CONCLUSION

For the foregoing reasons, I find that the Greenwood Community School Corporation denied you a personnel file in violation of the Access to Public Records Act.

Sincerely,

Karen Davis  
Public Access Counselor

cc: David E. Edds, Ed.D.