June 13, 2005

Richard E. Volbrecht
9221 Parkway Drive
Highland, IN 46322

  Re: *Formal Complaint 05-FC-97; Alleged Violation of the Access to Public Records*
    Act by the Metropolitan School District of Washington Township

Dear Mr. Volbrecht:

  This is in response to your formal complaint alleging that the Metropolitan School District of Washington Township (the "District") violated the Access to Public Records Act by failing to send you a copy of the Lilly Endowment Grant.

<div align="center">BACKGROUND</div>

  You filed a formal complaint with the office of the public access counselor on May 13, 2005. You allege that you are being refused a record even though you had mailed your payment for the copies on April 19, 2005. The record consists of a 23-page Lilly Endowment Grant that is used to pay for three or four math tutors at North Central High School. The District had responded to you by letter dated April 13, 2005, requesting that you send a check in the amount of $2.30. The respondent Mr. William Hammel promised to forward the record to you upon payment of the check.

  As of May 13, the date we received your complaint, you allege that the District had not sent you the record. I faxed a copy of the complaint and my standard cover letter to Mr. Hammel at his facsimile number on May 16. I received a confirmation that the fax had been received on May 16, 2005. When I had not received a response from the District as of today, I telephoned Mr. Hammel. He indicated to me that he did not have a record of having received my fax, and further that he believed that the record had been mailed to you already. Hence, upon contacting you by telephone and learning that you had not received the record in the mail, he was putting another copy in tomorrow's mail.

ANALYSIS

Any person may inspect and copy the public records of any public agency during the agency's regular hours of business, except as provided by section 4 of the Access to Public Records Act ("APRA"). Ind. Code 5-14-3-3(a). There are no strict timeframes within which an agency is required to produce a record; my office has opined that an agency should produce a record within a reasonable time. The reasonableness of production time depends on several factors, including the number of records that must be copied, whether the records are readily identifiable, and whether they are stored off-site, among other relevant factors.

An agency may require that a person submit payment for copies in advance of receiving the records. IC 5-14-3-8(e). A local agency such as a school may charge only the copying fee set by the governing body (here, the school board) in a fee schedule, and the charge may not exceed the "actual cost of copies." The APRA defines the "actual cost" as the cost of paper and the per-page cost for use of the copying equipment. IC 5-14-3-8(d).

I do not have any information regarding whether the $.10 charge per page is set by the District's school board in a fee schedule, or whether it meets or exceeds the "actual cost of copies." Further, you do not raise this issue, but rather take issue with the simple failure of the District to forward the copies to you upon its negotiation of your check.

I find that the District should have sent you the copies of the Lilly Grant upon the negotiation of your check, which would have taken place by the end of April if not sooner. The record was easily identifiable and readily accessible. In fact, the District avers that it had received your check on April 22, waited a week, and then mailed the record on April 29. If the District sent you the material on April 29, and it was merely lost in the mail, this would not violate the Access to Public Records Act. If the District mailed you the record for the first time on June 14, even through an oversight, this would be an unreasonably lengthy time to produce the record.

CONCLUSION

For the foregoing reasons, I find that the District did not violate the Access to Public Records Act if it mailed you the record on April 29 or sooner.

Sincerely,

Karen Davis
Public Access Counselor

cc: Mr. William D. Hammel