

July 24, 2006

Timothy R. Morgan
4606 Tamarack
Fort Wayne, IN 46835

Re: Formal Complaint 06-FC-100; Alleged Violation of the Access to Public Records Act by the Fort Wayne Community Schools

Dear Mr. Morgan:

This is in response to your formal complaint alleging that the Fort Wayne Community Schools ("School") violated the Access to Public Records Act in two respects: by failing to give you a copy of the May 8, 2006 board meeting minutes, and by refusing to give you an electronic version of the record request form.

BACKGROUND

You alleged in your two-part formal complaint that on May 18, 2006, you e-mailed the School a request for a copy of the draft Board meeting minutes for the May 8, 2006 meeting "as soon as they are drafted." Ms. Deborah Morgan, the School public information officer, told you that "there is currently no draft of the minutes of that meeting so I have no documents responsive to this request." You sent another e-mail request asking that Ms. Morgan provide "meetings waiting approval for the May 8, 2006 board meeting" (sic) and "all personnel reports, which are incorporated into the meeting and voted on May 8, 2006."

Your complaint states that Ms. Morgan's statement that no document exists because the document is not drafted is a denial of access, without specifying why you believe this is a denial of access. You state that the data was in fact available and forwarded to board members. You also allege that the minutes should include the personnel and financial report presented at the meeting on May 8, 2006.

Ms. Morgan's reply to this part of your complaint is that the draft minutes of the Board meeting were completed immediately prior to the Board meeting at which they are approved. Hence, the draft minutes did not exist at the time you requested them.

In the second part of your complaint, you complain that the law allows a person to request a record via e-mail, even though the agency may designate that the request be presented on the agency's form. You challenge Ms. Morgan's assertion that an electronic version of the form does not exist, since the School does not create forms using typewriters or by hand. In response to your formal complaint, Ms. Morgan contends that you are required to submit future requests on a form, that the form was created before a computer upgrade many years ago and has never been typed back into the new system. The School makes copies of this form and makes them available to persons when they request records. From the documentation that you supplied, the School offered to mail you its form, inviting you to return the form to Ms. Morgan via mail, fax, or in person.

ANALYSIS

Denial of Access to Electronic Request Form

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). A request for inspection or copying must be, at the discretion of the agency, in writing on or in a form provided by the agency. IC 5-14-3-3(a)(2). If a public agency receives a request for a record in person, the public agency is required to respond within 24 hours or the record is deemed denied. IC 5-14-3-9(a). If the public agency receives a request for a record via U.S. Mail or facsimile, the public agency is required to respond within seven calendar days, or the request is deemed denied. IC 5-14-3-9(b). The APRA is silent with respect to the timeframe for responding to e-mailed requests for records, but I have stated that a public agency should respond within seven days, the same time as mailed or faxed requests.

There is nothing in the APRA that specifically sanctions or prohibits a person from submitting a request via electronic mail. As I stated above, the APRA does not set out a response time for e-mailed requests. A public agency that opts to require a person to submit a request on or in a form provided by the public agency may permit the person to submit the form electronically. However, your complaint concerns whether the School is required to provide the form electronically, convinced as you are that the School maintains it electronically. Ms. Morgan denies that the form exists in electronic format, and gives a credible reason that the form exists only in hard copy. Nothing in the APRA requires that the agency convert its hard-copy records into electronic format. The School has offered to provide you with the form by mail to your home. Indiana Code 5-14-3-3(a)(2) requires only that the agency "provide" the form; it does not specify the format. Hence, as I read this part of your complaint, you have not shown that the School violated the APRA by failing to convert its record request form into electronic format.

May 8, 2006 Board Meeting Minutes

You complain that you were denied the minutes from the May 8 meeting, apparently because you do not believe that the School did not actually maintain the record as it told you. You seem also to take issue with the denial of the personnel reports, which would be matters incorporated into the minutes of the meeting, because the report was voted upon by the Board at the May 8 meeting and therefore must exist. Ms. Morgan stated in her complaint response only that draft minutes of the Board were completed immediately prior to the meeting at which they were approved (without stating what date that meeting was), which was after the School received your request.

Under the Open Door Law, a governing body of a public agency shall, as the meeting progresses, keep memoranda of: 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, and 5) any additional information required by statute. IC 5-14-1.5-4(b). 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. The minutes, if any are to be open for public inspection and copying. IC 5-14-1.5-4(c).

Your original request was for the minutes "as soon as they are drafted." This invited the School to respond that the typed minutes were not yet available, even if it possessed handwritten notes or a tape recording made during the meeting (and I do not know whether the School maintained those forms of draft minutes). The APRA requires that the request identify with reasonable particularity the record being requested. IC 5-14-3-3(a)(1). Hence, the School could have suggested that a copy of a tape recording could be made available if the draft minutes were still in preparation. However, I decline to find that the School's failure to do so amounted to a denial of access under the APRA, given the specificity of your request. Your record request also included the personnel report, but Ms. Morgan has not indicated why that was not produced. Accordingly, if the personnel report existed, it should have been made available for inspection and copying.

CONCLUSION

For the foregoing reasons, I find that the Fort Wayne Community Schools was required to provide to you with the personnel report from the May 8 Board meeting, but was not required to create an electronic records request form.

Sincerely,

Karen Davis
Public Access Counselor

cc: Ms. Deborah Morgan