

January 16, 2007

Tim R. Morgan
4606 Tamarack Drive
Fort Wayne, IN 46835

Re: Formal Complaint 06-FC-214; 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 Fort Wayne Community Schools ("School") violated the Access to Public Records Act ("APRA") by failing to give you a record. I find that the School did not violate the Access to Public Records Act if it does not maintain a record documenting an error in the average age of school buildings that was announced in a public meeting.

BACKGROUND

You claim that the School has denied your request for a record in violation of the Access to Public Records Act. You requested "supporting documentation for fiscal year 2006 "61 buildings average age 39 years" Year 2007 "63 buildings average age 49 years." The School sent you a response that stated that "the 2006 statement that 61 buildings average age 39 years was an error that has since been corrected." You state in your formal complaint that even an error has supporting documentation.

I sent a copy of your complaint to the School's public information officer, Deborah Morgan. She responded to your complaint, a copy of which is enclosed. Ms. Morgan asserts that, consistent with her response to you, the School has no supporting documentation because the statement that the buildings were an average age of 39 years was a mistake.

ANALYSIS

Any person may inspect and copy the public records of any public agency, except as provided in section 4 of the APRA. Ind. Code 5-14-3-3(a). A “public record” is any material that is “created, received, retained, maintained, or filed by or with a public agency.” IC 5-14-3-2(m). A request for a record must identify the record with reasonable particularity. IC 5-14-3-3(a)(1). If a public agency does not maintain a record, it should so state. A public agency is not required to create a record to satisfy a request for information. It is axiomatic that a public agency is not required under the APRA to produce a record for inspection and copying if one does not exist.

The School has asserted that it does not have any documentation showing that it had calculated the average age of school buildings to be 39 years, instead of the correct figure, 49 years. This is understandable if the figure in the budget materials was a typographical error rather than an error in calculation. Hence, your assertion that even an error has documentation may not hold water. On the other hand, the School should produce a record that shows the original calculation, if one exists, even if that calculation proved to be an error. I do not find the School has denied you a record on the information before me, where the School has asserted that no record exists. If you believe that the School is withholding a record, you may file an action in superior court under Indiana Code 5-14-3-9(e) seeking to compel the School to disclose the record.

CONCLUSION

For the foregoing reasons, I do not find that the Fort Wayne Community Schools has denied a public record.

Sincerely,

Karen Davis
Public Access Counselor

cc: Deborah Morgan