

May 16, 2007

Mr. Charles C. Garnette
4602 Lafayette Esplanade
Fort Wayne, IN 46806

Re: Formal Complaint 07-FC-100; Alleged Violation of the Access to Public Records Act by the Fort Wayne Community Schools

Dear Mr. Garnette:

This is in response to your formal complaint alleging that the Fort Wayne Community Schools ("Schools") violated the Access to Public Records Act by failing to provide public records in a timely manner. I find that the School should have provided at least some of the records before you filed your complaint, and that the actual time within which the School provided all the records was not reasonable.

BACKGROUND

You alleged in your formal complaint, filed on April 16, 2007, that your hand-delivered March 30 request was not filled in a timely manner. You sought five categories of records, including a current copy of a contract between the Schools and William L. Sweet, Jr., and current accounting records of the expenditures of the \$390,000 contract of Schmidt and Associates, in addition to other records.

The School acknowledged your request within 24 hours, but as of the filing of your complaint you have not heard from the School. You admit that your request was served on the day before the School's spring break, but you believe that the School's administrative office should have been able to handle your request during this time.

The School responded by letter dated April 26 that Ms. Deborah Morgan, the then-PIO officer was in the final stages of determining if there were any responsive documents, and expected to have the information to you early the following week. Since Ms. Morgan's departure from the School, Interim PIO officer Susan Imler has sent you a letter dated May 16

enclosing all available records and indicating that there are no responsive documents to your requests #2 and #3.

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). If a public agency receives a request for a record in person or by telephone, the public agency is required to respond within 24 hours or the record is deemed denied. IC 5-14-3-9(a).

There are no timeframes in the APRA that prescribe when a public agency must produce the records. A public agency may be able to produce public records immediately in some cases, but more time may be required for production when records are aged and are stored off-site, require review by counsel, or include disclosable and non-disclosable information that must be separated prior to disclosure. A public agency may regulate any material interference with the regular discharge of the functions or duties of the public agency or public employees. IC 5-14-3-7(a).

The School did respond to your request within the timeframe set out in the APRA. However, you allege that the School should have provided the records more timely in spite of your delivery of your request during the spring break. The School does not address any concern about lack of staffing during spring break, so I do not address your contention that spring break should have posed no problem in fulfilling a request. However, I agree that where you requested easily identified documents such as contracts or leases, these records should have been produced, or a letter stating that no responsive documents existed should have been sent to you, prior to April 16 when you filed your complaint. I have often advised agencies to consider a multi-part request severable so that at least some of the easily-disclosed records are produced before other records may be available.

Since your complaint was filed, I have received information from the School showing that the School produced records for the first time today, May 16. This was more than six weeks after you delivered your request to the School. Although the School provided all responsive records that it had, I have to find that the School did not provide the records within a reasonable time. It appears that Ms. Morgan’s departure from the School may have been partly responsible for this delay, and I do not believe the delay was meant as a denial. Nevertheless, the School should have contacted you at regular intervals to let you know if a delay was occasioned by staffing problems. I find that the School should have provided the records well before May 16, 2007.

CONCLUSION

For the foregoing reasons, I find that the Fort Wayne Community Schools should have provided responsive records in a reasonable timeframe and failed to do so in this instance.

Sincerely,

Karen Davis
Public Access Counselor

cc: Susan Imler