

July 13, 2007

People for Clark-Pleasant Schools
Tad Bohlsen and Thane Morgan
PO Box 672
Greenwood, Indiana 46142

Re: Formal Complaint 07-FC-155; Alleged Violation of the Access to Public Records Act by the Clark-Pleasant Community School Corporation

Dear Mrs. Bohlsen and Morgan:

This is in response to your formal complaint alleging that the Clark-Pleasant Community School Corporation (“Corporation”) violated the Access to Public Records Act (APRA) (Ind. Code 5-14-3) by failing to respond to your requests for public records dated March 14, 2007; March 16, 2007; May 18, 2007; May 21, 2007; and May 25, 2007. I find that the Clark-Pleasant Community School Corporation did not violate the Access to Public Records Act.

BACKGROUND

You allege that the Corporation failed to respond to your request for records submitted to the Corporation via electronic mail on the dates listed above. Specifically, the records to which you requested access are the following:

March 14, 2007 email

“These are the added items we said we need to look at yesterday:

1. Transportation expense. . . [discussion omitted]
2. ‘Extra’ (librarian, counselor, etc.) staffing rations needed to get NCA accreditation. We’ll also need standard compensation for those positions.
3. ‘Magic’ numbers for school sizes for K-4/5, 5-8, 5-6, 7-8, 9-12, etc.
4. Extracurricular Venue expenses (‘competition’ athletic fields, auditoriums, etc.)”

March 16, 2007 email

“What we need is viable construction options for all types of schools and/or their expansion and the constraints associated with land availability. The following would be examples:

- We can expand Whiteland High school by at most X classrooms. It is particle [sic] to do the complete expansion in two steps of X/2.
- We can build one new facility at the existing Pleasant Crossing site. There is not room for a high school but up to a X classroom intermediate school or Y classroom middle school could be built.
- Clark elementary can be expanded by Z classrooms of any grade K-4 once.
- Etc.”

May 17, 2007 email

- “1. The Bid Package #2 Construction Documents for Pleasant Crossing Elementary presented to the Board on May 16th, 2006.
2. The final construction documents (just a similar package to the 5/16 package above, but with the final square footage, and final floor layout, and final finishes), including final budget, for Pleasant Crossing Elementary.
3. The number of overtime hours currently authorized at the Pleasant Crossing construction site . . . [discussion omitted]
4. Total current expenditures to date for Pleasant Crossing . . .”

May 18, 2007 email

- “1. A list of each construction project where Mr. Jay Wise served as the Clerk of the Works, since he began his employment for Clark Pleasant. I am requesting the name of the facility involved, the budget for the project, and the start and completion dates for the project.
2. In particular, I am requesting this list include the amount of money, if any, paid to Mr. Wise, on top of his annual salary, to serve as the Clerk of the Works for each project, respectively.”

May 21, 2007 and May 25, 2007 emails

- “1. A copy of the contract between Clark-Pleasant (or the entity Clark-Pleasant used for this job) and its General Contractor (which I understand to be Geupel Demars Hagerman) for the new elementary school (named Pleasant Crossing) under construction now.
2. Copies of the soils reports for this school construction job.
3. Copies of all change orders issued to date fro this school construction job.”

You filed your formal complaint with this office on June 13, 2007, complaining the Corporation had not provided you with any of the requested documents. The Corporation responded to your complaint on June 27, 2007. The Corporation addressed each of the email requests individually. I am enclosing a copy of the response with this opinion. I will also refer to the response in the analysis section of this opinion.

ANALYSIS

Any person may inspect and copy the public records of any public agency during the regular business hours of the agency, except as provided in section 4 of the Access to Public

Records Act (“APRA”). 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). 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 request must specify with reasonable particularity the record being requested. IC 5-14-3-3(a)(1). A “public record” is any writing, paper, report, study, map, photograph, book, card, tape recording, or other material that is created, received, retained, maintained, or filed by or with a public agency and which is generated on paper, paper substitutes, photographic media, chemically based media, magnetic or machine readable media, electronically stored data, or any other material, regardless of form or characteristics. IC 5-14-3-2(m).

March 14, 2007 and March 16, 2007 emails

A person filing a formal complaint with the public access counselor must file the complaint not later than thirty days after the denial of access. IC 5-14-5-7(a). The complaint regarding the two March 2007 emails is untimely under the APRA. I cannot, therefore, issue an advisory opinion regarding the “requests” contained therein.

Informally, though, it is my opinion neither of those emails appropriately conveyed that they contained a request for records. In its response to your complaint, the Corporation indicates these two emails were part of a larger, ongoing discussion involving in-person meetings as well. These two particular emails are conversational and appear to be requests for discussion or contemplation of the issues rather than requests, with reasonable particularity as required by IC 5-14-3-3(a)(1), for access to public records. The phrases contained in those two emails like “items we said we need to look at” and “what we need is viable construction options” indicates to me you are asking the recipient to consider your thoughts or your request for development of ideas, lists, or statistics. Nothing in the APRA requires a public agency to *develop* records or information pursuant to a request. The APRA requires the public agency to *provide access* to records already created.

May 17, 2007 email

In response to your complaint regarding the May 17 request, the Corporation provided a copy of an email from Mr. Wise to Mr. Bohlsen indicating the request had been received and the Corporation was searching for responsive documents. While neither IC 5-14-3-9(a) or (b) specifically set forth the response time for a request submitted by email, previous public access counselors have said that the response should be sent within seven days of receipt of the request. *Public Access Counselor Formal Opinion 07-FC-25*. The response from Mr. Wise was sent via email on May 18, 2007 and was therefore timely.

In a letter dated June 26, 2007, Mr. Wise further addressed the items you requested. He indicated that while the Corporation was not in control of item #1 and #2 you requested, the Corporation did make efforts to get the documents and provided you with a cost for copying or an indication you could inspect the documents in person. The APRA authorizes the public

agency to charge a copy fee of the actual cost of copying, not to include labor and overhead costs. IC 5-14-3-8(d). These costs can be charged to the requestor prior to production of the documents.

Mr. Wise further indicated no record existed answering your request #3. Nothing in the APRA requires a public agency to *develop* records or information pursuant to a request. The APRA requires the public agency to *provide access* to records already created. For item #4, Mr. Wise again indicated no document existed that would be responsive to the request but did provide you with information related to the request.

The response by Mr. Wise was sent June 26, 2007. While the APRA does not specify a time for production or inspection of records, this office has stated that records must be provided within a reasonable time. But an agency shall 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. In its response the Corporation indicates this and the two subsequent requests came near the end of the school year when the Corporation was “attempting to deal with matters prior to the students and teachers leaving for their lengthy summer recess.” Under these circumstances, I do not find this to be an unreasonable amount of time for production or inspection of the requested records.

May 18, 2007 email

In response to your complaint regarding the May 18, 2007 request, the Corporation provided a copy of its response. Superintendent Coopman responded on May 21, indicating the Corporation would research the request and provide a further response within a reasonable time. This response was timely for the reasons provided in the previous section.

The Corporation in its response to your complaint also provided a copy of a letter sent to Mr. Bolhsen by Superintendent Coopman on June 14, 2007 (the letter is undated, but the indication by the Corporation is that it was sent on this date). It is my understanding the Corporation provided you with the requested information for item #1 and indicated for item #2 there were no responsive records because Mr. Wise received no additional remuneration. For the reasons provided in the previous section, I find this to be a timely response.

May 21, 2007 and May 25, 2007 emails

The May 21, 2007 request made to the private contractor should have been directed to the public agency, which you did on May 25, 2007. On the same day, Superintendent Coopman responded to your request, indicating the Corporation would search for the records and respond within a reasonable period of time. The response was timely for the reasons provided in the May 17, 2007 section.

On June 26 Mr. Wise responded to the request with information regarding the number of pages of the responsive documents and a total for copying costs. He also offered you could inspect the documents during normal business hours. For the reasons provided in the May 17, 2007 section, I again do not find this to be an unreasonable time for production or inspection of the documents.

CONCLUSION

For the foregoing reasons, I find that the Clark-Pleasant Community School Corporation did not violate the Access to Public Records Act.

Best regards,

Heather Willis Neal
Public Access Counselor

cc: Superintendent J.T. Coopman,
Clark-Pleasant Community School Corporation