

July 30, 2007

Kelly Soderlund and Ron Shawgo
The Journal Gazette
600 West Main Street
Fort Wayne, Indiana 46802

Re: Formal Complaint 07-FC-189; Alleged Violation of the Access to Public Records Act by Northwest Allen County Schools

Dear Ms. Soderlund and Mr. Shawgo:

This is in response to your formal complaint alleging Northwest Allen County Schools (“NACS”) violated the Access to Public Records Act (“APRA”) (Ind. Code 5-14-3) by denying your request for records. A copy of NACS’s response to your complaint is enclosed for your reference. I find that your request was not made with reasonable particularity but that if you work with Northwest Allen County Schools to narrow your request, the records you seek are required to be disclosed under the Access to Public Records Act.

BACKGROUND

In your complaint you allege you submitted a request to NACS on April 9, 2007 for “a copy of discipline actions taken against all certified teachers for the last 10 years . . .” You offered in your original request to “work with NACS to narrow this request to speed it along.” On April 11, NACS sent you a letter indicating the request had been forwarded to legal counsel for advisement. On May 16 you sent a letter to Mr. John Bloom, attorney for NACS, requesting in writing a status report regarding your request.

On May 17 Mr. Bloom sent you a response in which he indicated NACS was relying on your offer in your April 9 request to work the NACS to narrow the request. Mr. Bloom indicated NACS was denying your request because you did not state with reasonable particularity the records to which you requested access. Mr. Bloom reiterated an offer by NACS to grant you access to the minutes of the Board for the past ten years to assist you in identifying with reasonable particularity the records you seek.

On June 4, you sent another letter to Mr. Bloom. You indicated you spoke to the previous Public Access Counselor, Karen Davis, who told you the definition of “final action” as a vote by a governing body pertains to the Open Door Law (Ind. Code 5-14-1.5) and not the APRA. You indicated that in your conversation with Counselor Davis she said she believed NACS was required to provide information on demotions, suspensions and firings regardless of whether the board voted on them. You further indicated Counselor Davis instructed you to supply NACS with a list of employees for whom you were requesting information. You attached a list of all NACS teachers from the past nine years. You indicate you did not receive a further response from NACS prior to filing your complaint on June 29.

Mr. Bloom responded to your complaint on July 25. Mr. Bloom in his response outlined the history of the request described in the preceding paragraphs. He indicated you provided NACS with a list of all 636 current and former NACS employees in submitting your request. Mr. Bloom again indicated the appropriate course of action is for you to review the minutes of the Board and identify the specific employees whose records you seek rather than providing a list of all teachers from the past ten years.

ANALYSIS

The public policy of the APRA states that "(p)roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information." Ind. Code 5-14-3-1. NACS is clearly a public agency for the purposes of the APRA. IC 5-14-3-2. Accordingly, any person has the right to inspect and copy the public records of NACS during regular business hours unless the public records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. IC 5-14-3-3(a).

Except as otherwise provided by subsection (a), the following public records shall be excepted from section 3 of this chapter at the discretion of the public agency: . . .

(8) Personnel files of public employees and files of applicants for public employment, except for:

(A) the name, compensation, job title, business address, business telephone number, job description, education and training background, previous work experience, or dates of first and last employment of present or former officers or employees of the agency;

(B) information relating to the status of any formal charges against the employee; and

(C) the factual basis for a disciplinary action in which final action has been taken and that resulted in the employee being suspended, demoted, or discharged.

. . . This subdivision does not apply to the disclosure of personnel information generally on all employees or for groups of employees without the request being particularized by employee name.

IC 5-14-3-4(b).

A request for inspection and copying must:

(1) identify with reasonable particularity the record being requested; and

(2) be, at the discretion of the agency, in writing on or in a form provided by the agency. No request may be denied because the person making the request refuses to state the purpose of the request, unless such condition is required by other applicable statute. IC 5-14-3-3(a).

In this case, you requested a copy of discipline actions taken against all certified teachers for the last ten years. You specifically cited the exceptions within the exception for personnel records in IC 5-14-3-4(b)(8). And in your original request, you offer to “work with NACS to narrow the request to speed it along.”

I believe the issues presented here to be almost identical to those presented in *Office of the Public Access Counselor Formal Opinion 07-FC-170*. As such, I am including a copy of that opinion, which I previously sent you on July 18. My opinion in that matter stands and applies to this matter.

It is therefore my recommendation you do as you have offered and work with NACS to narrow the request, whether by reviewing the minutes of the School Board or by some other means. Once you have identified the records you request with reasonable particularity, it is my belief based on the communications I have reviewed between you and NACS that NACS will then work to provide access to the particular records related to disciplinary action and other information required to be disclosed under IC 5-14-3-4(b)(8).

CONCLUSION

For the foregoing reasons, I find that your request was not made with reasonable particularity but that if you work with Northwest Allen County Schools to narrow your request, the records you seek are required to be disclosed under the Access to Public Records Act.

Best regards,

Heather Willis Neal
Public Access Counselor

cc: John S. Bloom, Attorney for Northwest Allen County Schools