

September 5, 2007

Nicole Kauffman
The Herald-Times
1900 South Walnut Street
Bloomington, Indiana 47401

Re: Formal Complaint 07-FC-233; Alleged Violation of the Access to Public Records Act by the Monroe County Community School Corporation

Dear Ms. Kauffman:

This is in response to your formal complaint alleging the Monroe County Community School Corporation (“Corporation”) violated the Access to Public Records Act (“APRA”) (Ind. Code §5-14-3) by not providing certain personnel records you requested. A copy of the Corporation’s response is enclosed for your reference. I find that the Corporation did not violate the APRA.

BACKGROUND

In your complaint you allege that on July 24, 2007 you requested records from the Corporation. Specifically you requested personnel records related to the termination of two employees from Bloomington High School South in connection with the State Board of Accounts (“SBOA”) audits conducted this summer. You asked for the names, length of time employed with the Corporation and other personnel information pertaining to the reason for the individuals’ termination. The response from the Corporation on July 30 indicated that until the Corporation knew what the final action from the SBOA was, it would not consider releasing the information. You sent your complaint on July 31, and I received it on August 3.

The Corporation responded to your complaint by letter from attorney Thomas Bunger dated August 27. Mr. Bunger indicates that since July 30, the Corporation has provided you with names of the employees at issue as well as their dates of employment. Mr. Bunger indicates that during the SBOA audit, questions were raised concerning extracurricular funds at Bloomington High School South. In response to the initial audit exit interview, the Corporation indicated that the two employees were no longer employed by the Corporation. At that point, the SBOA had not determined whether the issue would be referred to the local prosecuting attorney.

The Corporation asserts that you requested information relating to the termination of the two employees in connection with the SBOA audit. The Corporation further indicates that one of the two employees resigned from employment and the other was terminated at a regular Board meeting but no reference was made to the SBOA audit. As such, the Corporation asserts it did not maintain any records responsive to your request. The Corporation indicates that you have since modified your request to seek the names of the employees who had been in the employ of the Corporation and no longer worked for the Corporation and were mentioned in the SBOA audit. When the Corporation received this request, it provided you the names and dates of employment for those two employees. Finally, the Corporation indicates no charges have yet been filed in this matter since the SBOA has not finalized its audit.

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. The Corporation is clearly a public agency for the purposes of the APRA. I.C. §5-14-3-2. Accordingly, any person has the right to inspect and copy the public records of the Corporation during regular business hours unless the public records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. I.C. §5-14-3-3(a).

A "public record" means 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. I.C. §5-14-3-2.

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.

I.C. §5-14-3-4(b).

Here you asked the Corporation for personnel records related to the termination of two employees from Bloomington High School South in connection with the SBOA audit conducted this summer. There is no question certain personnel information is required to be disclosed under I.C. §5-14-3-4(b)(8). The information you seek falls into the list of personnel records

required to be disclosed. However, since you requested this information for two employees related to termination in connection with the audit and the two employees in question were not terminated because of the audit, the Corporation did not have any records responsive to your specific request. As such, the Corporation did not have a duty to disclose any records.

As I understand this situation, though, it was primarily a miscommunication. You sought records related to employees terminated in connection with the SBOA audit, and there were no such employees. When you renewed your request with different wording, the Corporation responded to your request with the information you sought and were entitled to receive under I.C. §5-14-3-4(b)(8). Since no charges have been filed to date, I understand there are likely no records under I.C. §5-14-3-4(b)(8)(B). To the extent you seek records related to the two employees regarding any formal charges or any disciplinary actions resulting in final action where the employee was suspended, demoted or discharged (and not just records associated with the SBOA audit), you would be entitled to receive those as well to the extent they fall under the list provided in I.C. §5-14-3-4(b)(8).

CONCLUSION

For the foregoing reasons, I find that the Corporation did not violate the APRA.

Best regards,



Heather Willis Neal
Public Access Counselor

cc: Thomas Bunger, Monroe County Community School Corporation

¹ Previous Public Access Counselors have opined that the 24 hour response required by the APRA means 24 business hours. Like other previous counselors, I initially interpreted that to mean 24 hours of operation, or roughly three business days. I understand now that the first Public Access Counselor, Counselor O'Connor, interpreted 24 hours as the next business day. I subscribe to that interpretation. This means a public agency must respond to a request submitted orally by the same time the next business day.