

September 6, 2007

Cathy McKinney  
10383 W CR 150 S  
Norman, Indiana 4764

*Re: Formal Complaint 07-FC-236; Alleged Violation of the Access to Public Records Act by the Medora Community School Corporation*

Dear Ms. McKinney:

This is in response to your formal complaint alleging the Medora Community School Corporation (“Corporation”) violated the Access to Public Records Act (“APRA”) (Ind. Code §5-14-3) by not providing you access to records. 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 August 1, 2007 you requested records from the Corporation. Specifically you requested an itemized bill including “call details” for all corporation paid cellular phones. You allege you made the request in writing by appearing in person at the administration office. You allege you returned 24 hours later to pick up the records and allege you were denied access by Dr. Andrew Day, who indicated the records had not been obtained. You filed your complaint on August 7.

The Corporation responded to your complaint by letter from Dr. Day dated August 21. Dr. Day contends your request was made on August 2 rather than August 1 and provides a copy of your request as evidence of such. Dr. Day asserts he mailed a response to you on August 3, indicating the request had been received and the records would be produced in a reasonable amount of time. On August 3 you were told that the Corporation did not have access to the phone bills because they were not in the custody of the Corporation or the agent. Because itemized phone bills were never requested from the telephone company, Dr. Day began working to retrieve the records. He spent two days attempting to retrieve the phone bills and was able to retrieve them on August 6, after which they were delivered to you.

## 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.

A request for records may be oral or written. I.C. §5-14-3-3(a); §5-14-3-9(c). If the request is made orally, the public agency must respond within 24 business hours. I.C. §5-14-3-9(a).

A response could be an acknowledgement that the request has been received and information regarding how or when the agency intends to comply. There are no prescribed timeframes when the records must be produced by a public agency. A public agency is required to regulate any material interference with the regular discharge of the functions or duties of the public agency or public employees. I.C. §5-14-3-7(a). However, section 7 does not operate to deny to any person the rights secured by section 3 of the Access to Public Records Act. I.C. §5-14-3-7(c). The public access counselor's office has stated that records must be produced within a reasonable period of time, based on the facts and circumstances. Consideration of the nature of the requests (whether they are broad or narrow), how old the records are, where the records are kept, and whether the records must be reviewed and edited to delete nondisclosable material are necessary to determine whether the agency has produced records within a reasonable timeframe.

Here you made your request at 12:02 p.m. on August 2. Dr. Day provided a response the next day, falling within the 24 hour response time allowed by the APRA. The response is not required to be production of the records. Given that the records you requested were not maintained by the Corporation, you could not be provided immediate access to personally inspect and copy the records. Dr. Day has indicated the office was in the middle of the 2008 budget process in addition to getting ready for the start of school, certainly a busy time in a school corporation office. While it is not meant to deny any rights secured by section 3 of the APRA, section 7 of the APRA provides that a public agency must regulate any material interference with the regular discharge of duties of the agency. I.C. §5-14-3-7(a). Here Dr. Day spent a considerable amount of time attempting to retrieve the records you requested at a particularly busy time for the office. I find the two-business day turn-around on this request to be more than reasonable under the circumstances.

Regarding the specific records you requested, no assertion has been made by the Corporation that it should not have been required to produce the records. However, I will remind

you that 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. To the extent you request records neither created, received, retained, maintained or filed by or with the Corporation or required to be created, received, retained, maintained or filed by or with the Corporation under I.C. §5-15 or other applicable statute, the Corporation is not required to create records to satisfy your request.

#### CONCLUSION

For the foregoing reasons, I find that the Corporation did not violate the Access to Public Records Act.

Best regards,



Heather Willis Neal  
Public Access Counselor

cc: Dr. Andrew Day, Superintendent, Medora Community School Corporation