

October 17, 2007

Dean Rouch
PO Box 69
Lakeville, Indiana 46536

Re: Formal Complaint 07-FC-283; Alleged Violation of the Access to Public Records Act by the Union North School Corporation

Dear Mr. Rouch:

This is in response to your formal complaint alleging the Union North School Corporation ("School") violated the Access to Public Records Act ("APRA") (Ind. Code §5-14-3) by denying your request for access to records, namely to two resignation letters of former employees. I find that the School has not violated the APRA by denying you access to the two resignation letters.

BACKGROUND

In your complaint you allege that you requested from the School on August 30, 2007 copies of resignation letters of two former School employees. After a series of communications between the School and you during which you referred to *Opinion of the Public Access Counselor 01-FC-26* (finding the City of New Albany should disclose resignation letters of former employees), the School ultimately denied you access to the letters, claiming they were excepted from disclosure at the discretion of the School under I.C. §5-14-3-4(b)(8). You filed this complaint on September 18.

The School did not respond to your complaint at my invitation to do so.

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." I.C. §5-14-3-1. The School is clearly a public agency for the purposes of the APRA. I.C. §5-14-3-2(1)(2). Accordingly, any person has the right to inspect and copy the public records of the School 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 delivered by mail or facsimile and the agency does not respond to the request within seven days of receipt, the request is deemed denied. I.C. §5-14-3-9(b).

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.

I.C. §5-14-3-4(b).

Here, you have requested copies of resignation letters submitted to the School by two former employees. Records of a public agency are presumed to be disclosable unless a statutory exception applies. I.C. §5-14-3-3(a). The public access counselor has previously addressed the issue of employee resignation letters in *Opinion of the Public Access Counselor 01-FC-26*. In that opinion, Counselor O’Connor opined that the City of New Albany violated the APRA by denying access to two resignation letters when the City did not provide a valid statutory exemption to disclosure.

The difference between that opinion and the present matter is that the City of New Albany did not claim that the resignation letters were part of the personnel files of the employees. Here, the School claims that since the resignation letters are part of the personnel files of public employees, they are excepted from disclosure at the discretion of the School under I.C. §5-14-3-4(b)(8). Section 4(b)(8) provides an exception within the exception to disclosure, requiring the disclosure of certain records contained in the personnel files of an employee but providing a general exception for the remainder of the personnel file. The records at issue here are not records which fall into any of the exceptions within the exception listed in I.C. §5-14-3-4(b)(8). While it is not my opinion that *any record* placed into an employee personnel file can be withheld from disclosure using this exception, it is my opinion that records *related to an individual’s employment* which are maintained as part of the employee’s personnel file, including a resignation letter, may be withheld from disclosure at the discretion of the agency under this exception.

CONCLUSION

For the foregoing reasons, I find that the School has not violated the APRA by denying you access to the two resignation letters.

Best regards,

A handwritten signature in black ink that reads "Heather Willis Neal". The signature is written in a cursive style.

Heather Willis Neal
Public Access Counselor

cc: Superintendent Larry Phillips, Union North School Corporation