

February 5, 2007

Lillie Mae Hubbard
2502 East Kitchel Road
Liberty, IN 47353

Re: Formal Complaint 07-FC-3; Alleged Violation of the Access to Public Records Act by the Union County College Corner Joint School District

Dear Ms. Hubbard:

This is in response to your formal complaint alleging that Union County College Corner Joint School District ("School") violated the Access to Public Records Act ("APRA") by failing to disclose the superintendent's contract and a financial plan that was filed with the Indiana Department of Local Government Finance.

BACKGROUND

You requested on January 4, 2007 several documents from the School. Two of your requests are the subject of this complaint. First, you requested a copy of the actual superintendent's contract. In addition, you requested copies of the financial plan referred to in a December 21, 2006 newspaper article. You state in your complaint that you were told that the documents were ready for pickup on January 3. You cite the "lack of substantive response." From the documentation you provided with your complaint, I can infer that you were not given the financial plan, or any explanation regarding why this document was not provided. You were provided with several pages of information about Dr. Ransford, the superintendent, from his personnel file. The pages bear a message stating that this is information that is required to be disclosed from a personnel file. However, no contract was included in the documents.

I sent a copy of your complaint to the School. Attorney Ronald Rychener provided a written response, a copy of which is attached. Mr. Rychener stated that the financial plan was a spreadsheet prepared by the superintendent. It was an intra-agency document which was deliberative in nature. It contains the suggestions of the superintendent on proposed budgetary cuts, including the reduction in force of certified staff members. The record is an expression of

the suggestions and opinions of the superintendent and is speculative in nature. The financial plan therefore is exempt as deliberative material under Ind. Code 5-14-3-4(b)(6).

Mr. Rychener also stated that the actual superintendent contract would be supplied. You received a contract after filing the complaint but before I issued this Opinion. You faxed the contract to my office. The contract provided to you has a signature page dated 2001, and is not executed by either party. In addition, the cover page appears to have been redacted, because a three-inch portion just below the base salary is blank, and over this appears in handwriting "personal annuity information." Following this handwritten message is printed material regarding payment of an annuity.

ANALYSIS

Any person may inspect and copy the public records of any public agency, except as provided in section 4 of the Access to Public Records Act. Ind. Code 5-14-3-3(a). "Public record" is any material that is "created, received, retained, maintained, or filed by or with a public agency." IC 5-14-3-2(m). If a public agency intends to deny a written request for a record, the denial must be in writing, and the denial must include a statement of the specific exemption or exemptions authorizing the withholding of all or part of the public record, and the name and the title or position of the person responsible for the denial. IC 5-14-3-9(c).

A contract of a superintendent is a disclosable public record. The School initially responded to your request by giving you information from the superintendent's personnel file. While this may have been helpful, it did not respond to your request for the contract. A contract is not personnel file information. *See Opinion of the Public Access Counselor 04-FC-238*. In other words, a public agency may not withhold a contract of a public employee and supply only the information that is required to be disclosed under IC 5-14-3-4(b)(8).

After you filed your complaint, you received a document. However, you did not receive the executed contract. There appears to be portions of the contract that are redacted. A public agency is required to separate disclosable information in a record from nondisclosable information. IC 5-14-3-6(a). However, the public agency must cite the exemption that applies to the portion of the record that is redacted, in accordance with IC 5-14-3-9(c). Here, the School inserted in handwriting that the annuity information is personal, without citing any exemption that applies to annuity information. I am not aware of any exemption that would apply, but if the School intends to withhold that part of the superintendent's contract, it must cite an applicable exemption. If no exemption applies, it must disclose the record. I urge the School to supply you with a copy of the entire executed superintendent's contract, or explain what exemption authorizes it to withhold part of the contract.

The School claims that the financial plan is a deliberative document. The School may in its discretion withhold a record that is intra-agency or interagency advisory or deliberative material, including material developed by a private contractor under a contract with a public agency, that is expression of opinion or is of a speculative nature, and that is communicated for the purpose of decision making. IC 5-14-3-4(b)(6).

The School bears the burden of proof that the financial plan is subject to the deliberative materials exemption. *See* IC 5-14-3-1; IC 5-14-3-9(g). To discharge its burden, the School must show that the document is intra-agency, is expression of opinion or speculative, and was communicated for the purpose of decision making. The School avers that the financial plan was intra-agency because it was communicated to the Department of Local Government Finance, a public agency. The School also states that the spreadsheet contained information that was both speculative and embodied the superintendent's opinion with respect to proposed budget cuts. The School's response does not argue that the information was communicated for the purpose of decision making, but that seems implicit from the information provided as to the purpose of the plan's submission to the Department of Local Government Finance.

Nothing in the School's response leads me to a negative conclusion about the financial plan's fitting the deliberative material exemption. Ultimately, a court would view the document *in camera* if you or anyone else filed a lawsuit to compel the School to disclose the financial plan. *See* IC 5-14-3-9(h).

CONCLUSION

For the foregoing reasons, I find that the Union County College Corner Joint School District must disclose the entire executed contract of the superintendent, or cite the exemption that applies to any portion withheld. Also, the School bears the burden of proving that the financial plan is exempt under the Access to Public Records Act.

Sincerely,

Karen Davis
Public Access Counselor

cc: Ronald K. Rychener