

November 8, 2007

John Emry  
62 West Jefferson Street  
Franklin, Indiana 46131

*Re: Formal Complaint 07-FC-314; Alleged Violation of the Access to Public Records Act by the Switzerland County School Corporation*

Dear Mr. Emry:

This is in response to your formal complaint alleging the Switzerland County School Corporation (“Corporation”) violated the Access to Public Records Act (“APRA”) (Ind. Code 5-14-3) by failing to respond to your request for records. I have enclosed a copy of the Corporation’s response to your complaint for your reference. It is my opinion the Corporation did not violate the APRA.

#### BACKGROUND

You allege that you submitted a request to the Corporation dated September 20, 2007 for copies of records related to a student of the Corporation. You included with request an authorization for the release of protected information signed by the student and his mother. You filed your complaint on October 10, alleging you had not received a response.

The Corporation responded to your complaint by letter dated October 25 from Ronald Hocker, attorney for the Corporation. Mr. Hocker contends that since the Corporation received your request on September 24 along with your Notice of Tort Claim, the Corporation did not recognize the letter as a request submitted pursuant to the Access to Public Records Act. As such, the Corporation referred the letter to the insurance company, believing the matter should be handled by the company. The Superintendent was in the process of collecting the records at the time of receipt of this complaint. Upon receiving notice of the complaint, the Corporation contacted you to work out a schedule for producing the records. The records are scheduled to be produced by tomorrow.

## ANALYSIS

The public policy of the APRA states, "(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 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 by mail, electronic mail or facsimile and the agency does not respond within seven days of receipt, the request is deemed denied. I.C. §5-14-3-9.

Here you submitted your request for records with a Notice of Tort Claim you submitted to the Corporation. In your request, you did not indicate the request was being made pursuant to the Access to Public Records Act. While the APRA does not require citation to the law in a request for records, I can certainly understand the confusion on the part of the Corporation when the request was delivered in a cover letter for a Notice of Tort Claim. It is my opinion it was reasonable for the Corporation to interpret this request as the beginning of the discovery process for the tort claim. As such, it was reasonable for the Corporation to turn the request over to the insurance carrier along with the Notice of Tort Claim.

Once the Corporation knew the request was a request for records under the APRA, it had a duty to respond (See I.C. §5-14-3-9), which I understand it did. I further understand the Corporation is scheduled to produce the requested records by tomorrow. So long as the Corporation produces the records or provides a statutory exemption to disclosure, it is my opinion the Corporation did not violate the APRA.

## CONCLUSION

For the foregoing reasons, it is my opinion the Corporation did not violate the APRA.

Best regards,



Heather Willis Neal  
Public Access Counselor

cc: Ronald Hocker  
Superintendent Tracy Caddell, Switzerland County School Corporation