

November 30, 2007

Tad Bohlsen
4926 East 575 North
Whiteland, Indiana 46184

Re: Formal Complaint 07-FC-330; Alleged Violation of the Access to Public Records Act by the Clark-Pleasant Community School Corporation

Dear Mr. Bohlsen:

This advisory opinion is in response to your formal complaint alleging the Clark-Pleasant Community School Corporation (“Corporation”) violated the Access to Public Records Act (“APRA”) (Ind. Code 5-14-3) by denying you access to records. A copy of the Corporation’s response is enclosed for your reference. It is my opinion that while the board packet materials are public records (unless exceptions to disclosure apply) once they are created, the APRA does not provide for a blanket request for records which have not yet been created.

BACKGROUND

You allege that on September 11, 2007 you sent a letter to the Corporation’s Board of Trustees (“Board”) requesting a copy of the “board packet,” the set of materials the Board reviews at its public meetings. You received a response from the Corporation’s Superintendent on September 18. In the response, the Superintendent did not address your request for the board packet. On October 4 you sent another letter to the Corporation reiterating your request that the board packet be made available at public meetings. You requested the Board to consider this request at its meeting. You received an electronic mail message from the Superintendent dated October 16 indicating the Board did not feel it was appropriate to place the issue on the agenda. You filed your complaint on October 29, alleging denial of access to the board packet materials. You specifically request one extra copy of the board packet be made available for public inspection during each of the Board’s meetings.

The Corporation responded to your complaint by letter dated November 14 from attorney Charles Rubright. Mr. Rubright questions the definition of board packet, inquiring whether the packet consists of all material sent to a school board or only material sent to the board in advance of a meeting. Mr. Rubright explains that the Board was within its authority in considering

whether to place your issues on the Board agenda. Mr. Rubright contends your complaint does not allege a violation of the APRA but rather seeks an opinion from my office regarding whether the board packet materials must be made available for inspection during a Board meeting which takes place during non-business hours. Mr. Rubright further contends no request was ever made for a particular board packet; the request was for future board packets. Mr. Rubright indicates that the public access counselor has previously indicated that the APRA does not provide for standing or continuing requests. Mr. Rubright also contends that information in any given board packet may be nondisclosable for reasons set forth in the APRA.

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, and the agency has the discretion to require the request in writing on or in a form prescribed by the agency. I.C. §5-14-3-3(a); §5-14-3-9(c). A denial of disclosure occurs when the person making the request physically appears in the office and the agency does not respond to the request within 24 hours (See I.C. §5-14-3-9(a)) or when the person delivers the request by mail, facsimile or electronic mail and the agency does not respond to the request within seven days (See I.C. §5-14-3-9(b)).

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 has stated that records must be produced within a reasonable period of time, based on the facts and circumstances.

A request for inspection or copying must identify with reasonable particularity the record being requested. I.C. §5-14-3-3(a).

The Corporation contends that you have not alleged a violation of the APRA. Rather, you asked for an opinion from me as to whether the board packet should be provided to you at each Board meeting. Among the duties of the public access counselor are issuing opinions in response to formal complaints and issuing opinions in response to informal inquiries. I.C. §5-14-

4-10. The opinions issued in response to either filing have the same weight. As such, I am issuing this opinion in response to your request for an opinion.

I have addressed the issue of an ongoing request for a packet used by a governing body in *Opinion of the Public Access Counselor 07-FC-259*. There, an individual made a blanket request at the beginning of the year for a copy of the Council's packet for each meeting in the upcoming year. In response to the complaint, my opinion was as follows:

Regarding your blanket request on January 1 for all council packets for the year, I do not believe this to be a request made with reasonable particularity under the APRA. The definition of public records required to be disclosed under the APRA includes 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. The definition does not include records yet to be created, and as such the Town is under no obligation to produce records that have not been created. If you wish to receive each council packet for the year, you should request each packet after it has been created. *Id.*

I hold the same opinion regarding the matter at issue here. The APRA does not provide for a continuing or blanket request for records to be created in the future. The definition of public record refers to records which have been created at the time of the request, and a request cannot identify with reasonable particularity records which have not yet been created. If you wish to receive a copy of the board packet, you should request each packet after it has been created.

Regarding the board packet materials, all records of the Corporation are presumed to be public records unless an exception to disclosure is present. I.C. §5-14-3-1; I.C. §5-14-3-3. If you submit a request to the Corporation for each board packet after it has been created, the Board has the duty to respond to your request and either allow you to inspect and copy the records or provide you with the statutory provisions excepting disclosure of certain information. I.C. §5-14-3-3; I.C. §5-14-3-9. The Corporation has indicated a board packet might contain information deemed confidential by federal law or might contain information excepted from disclosure under the APRA. In each circumstance, the Board would need to respond to your request with the statutory authority excepting disclosure.

Regarding your request that the board packet be made available to you at the time of each Board meeting, the APRA does not provide a time by which records must be provided in response to a request. This office has long said that records must be produced within a reasonable amount of time based on the facts and circumstances. Since a particular board packet is not at issue here, I do not have a set of facts and circumstances to consider. But I would not assume it would always be reasonable to expect the packet to be provided in advance of the meeting. If, for instance, the packet were finalized close to the meeting time and the packet had not yet been reviewed for disclosable and nondisclosable information, it is my opinion it would be reasonable for the Corporation to provide the packet at some point after the meeting.

CONCLUSION

For the foregoing reasons, it is my opinion that while the board packet materials are public records (unless exceptions to disclosure apply) once they are created the APRA does not provide for a blanket request for records which have not yet been created.

Best regards,



Heather Willis Neal
Public Access Counselor

cc: Charles Rubright, Bose McKinney & Evans LLP
Howard Young, President, Clark-Pleasant Community School Corporation Board of Trustees