

December 26, 2007

Thomas Purpus
1042 Silver Court
Anderson, Indiana 46012

Re: Formal Complaint 07-FC-357; Alleged Violation of the Access to Public Records Act by the Anderson Community School Corporation

Dear Mr. Purpus:

This advisory opinion is in response to your formal complaint alleging the Anderson Community School Corporation (“Corporation”) violated the Access to Public Records Act (“APRA”) (Ind. Code 5-14-3) by denying you access to records. I have enclosed a copy of the Corporation’s response to your complaint for your reference. In my opinion the Corporation has not violated the APRA.

BACKGROUND

In your complaint you allege you submitted to the Corporation letters dated October 20, 2007 and October 24, 2007 attempting to gain access to records still outstanding from your previous requests. You allege that you spoke with Mikella Lowe, Superintendent of the Corporation on October 24, at which time she indicated her belief that all records had been provided to you. Your October 24 letter included a redlined list of what records were still outstanding. You filed this complaint on November 30 (postmarked November 29), alleging you still have not receive some requested records.

The Corporation responded to your complaint by letter dated December 17 from Charles Rubright, General Counsel for the Corporation. Mr. Rubright contends that many of your requests are requests for clarification, information, or answers to questions rather than requests for access to records, and the APRA does not require the Corporation to respond to questions. He indicates that the Corporation has responded to some of your questions even though the APRA does not require such. Mr. Rubright further contends that your requests for contracts between the Corporation and Dr. Long and/or Mr. Banks have been fulfilled. The Corporation previously indicated it would search to determine whether any additional documents exist responsive to your request but has not located any.

Regarding your request for minutes and agendas, Mr. Rubright contends that you are on the list to receive all copies of notices, agendas, and minutes of meetings, and you have been receiving those. He further contends that you retracted a January 12 request for minutes and agendas since you had already received those records.

Regarding your request for written directives from the School Board to Dr. Long or any written responses from Dr. Long to oral directives of the Board, Mr. Rubright sent the responsive records on December 13. You had requested those records on January 12, and the records were forwarded by the Corporation to Mr. Rubright for review. The records were inadvertently placed in a folder and discovered when Mr. Rubright was preparing this response.

Finally, regarding your request for disclosable information in Mr. Banks' personnel file, the Corporation contends that Mr. Banks was an independent contractor. As such, the Corporation does not maintain a personnel file. The governing document for the relationship with Mr. Banks is the contract, which was previously provided to you.

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." I.C. §5-14-3-1. Any person has the right to inspect and copy the public records of a public agency 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).

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 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). A person denied access to records may file a complaint with the public access counselor not later than thirty days after the denial. I.C. §5-14-5-6; I.C. §5-14-5-7.

Your last request was made to the Corporation by letter dated October 24. Assuming the Corporation received the request on October 25, the Corporation would have been required to respond to you by November 1. If there was no response, November 1 would be the date of denial of access. You would then have thirty days to file your complaint, so not later than December 1. I.C. §5-14-5-7. You submitted your complaint on November 29, and I received it on November 30. Your complaint was timely filed. I explain this timing of your complaint

because in your letter to the Corporation dated October 20, you indicate that if the Corporation does not respond, you will consider the denial date to be November 21. Under the APRA, the requester cannot arbitrarily assign a “denial date.” Denial of access occurs when the agency does not respond to the request within seven days (when the request is made by mail or facsimile). I.C. §5-14-3-9(b). There is no statutory deadline for production of records; the deadline is only for a response to the request.

Your requests to the Corporation, as Mr. Rubright points out, contain a number of inquiries and requests for clarification. The APRA requires an agency to provide access to public records unless an exception to disclosure is present. I.C. §5-14-3-3. The APRA does not require an agency to answer inquiries or to provide clarification or explain a record. The APRA does not require an agency to answer inquiries even when those inquiries are directly related to the records requested. I understand the Corporation has answered some of your inquiries. The Corporation did not violate the APRA by refusing to answer any of your inquiries or requests for clarification.

Further, the APRA requires a request for inspection or copying to identify with reasonable particularity the record being requested. I.C. §5-14-3-3(a)(1). “Reasonable particularity” is not defined in the APRA. “When interpreting a statute the words and phrases in a statute are to be given their plain, ordinary, and usual meaning unless a contrary purpose is clearly shown by the statute itself.” *Journal Gazette v. Board of Trustees of Purdue University*, 698 N.E.2d 826, 828 (Ind. Ct. App. 1998). Statutory provisions cannot be read standing alone; instead, they must be construed in light of the entire act of which they are a part. *Deaton v. City of Greenwood*, 582 N.E.2d 882 (Ind. Ct. App. 1991). “Particularity” as used in the APRA is defined as “the quality or state of being particular as distinguished from universal.” *Merriam-Webster Online*, www.m-w.com, accessed July 18, 2007. In my opinion, this means a request is reasonably particular when the agency can determine what records the requester is seeking. Your requests contain a number of inquiries and requests for information but leave the agency determine which records might answer those questions. The agency is not required by the APRA to try to determine which records might answer questions posed. Instead, the requester must identify with reasonable particular the records he seeks. I.C. §5-14-3-3(a)(1).

Regarding your requests for meeting notices, agendas and minutes as well as contracts between the Corporation and Dr. Long and between the Corporation and Mr. Banks, I understand all those records have been provided to you. The APRA requires an agency to provide one copy of a record to a requester. I.C. §5-14-3-8(e). If the Corporation has previously provided you with copies of those records, it is not required to do so again.

Mr. Rubright sent to you on December 13 records responsive to your request for written directives of the Board to Dr. Long or Dr. Long’s written responses to oral directives. You had requested the records on January 12. The Corporation forwarded copies of the records to Mr. Rubright for his review to determine whether the records were disclosable. Mr. Rubright indicates the records were inadvertently placed in a folder rather than being sent to you. The length of time it took the Corporation to produce those records may have been an unreasonable amount of time, depending on the age of the records, how they were maintained, and whether each page was required to be reviewed. I understand you now have those records.

Finally, you have requested disclosable records from the personnel file of Mr. Banks. The Corporation contends Mr. Banks was an independent contractor and as such no personnel file exists. While the APRA does require certain personnel file information to be disclosed (See I.C. §5-14-3-4(b)(8)), it does not require an agency to maintain a personnel file, on any employee or contractor. 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. As such, it is my opinion the Corporation did not violate the APRA by indicating no personnel records exist beyond the contract, of which you already have a copy.

CONCLUSION

For the foregoing reasons, it is my opinion the Corporation has not violated the Access to Public Records Act.

Best regards,



Heather Willis Neal
Public Access Counselor

Cc: Mikella Lowe, Superintendent, Anderson Community School Corporation
Charles Rubright, Bose McKinney & Evans LLP