

April 9, 2007

Darren Wilkinson  
630 Putnam Street  
Terre Haute, IN 47802

*Re: Formal Complaint 07-FC-63; Alleged Violation of the Access to Public Records Act by the Vigo County School Corporation*

Dear Mr. Wilkinson:

This is in response to your formal complaint alleging that the Vigo County School Corporation (“School”) violated the Access to Public Records Act by refusing to disclose records concerning individual class grading records for the first year Spanish classes and the number of students that have withdrawn from the first year Spanish class. I find that if the School does not have the specific record you request, the School is not required to compile a new record.

#### BACKGROUND

The records that form the basis for your complaint are:

- Individual class grading records for all first year Spanish classes taught at Vigo County School Corporation over the last five school years, with names of students removed. This information “will need to include individual grades for all said students, broken out by teacher, school and year;” and
- The number of students that have withdrawn from first year Spanish classes, sorted by teacher, school, and year, within the Vigo County School Corporation, from 2002-03 to 2006-07.

For both requests, you asked the school to list the source for the information. You allege that the School’s February 26 response relied on semantics, where the response stated that the School did not maintain the records.

You state that collecting and tracking student grades is a core function of the School. The School uses a computer software program called Rediker. One of the programs allows

teachers to enter student grades, including class withdrawals. The EdLine program is designed to allow users to quickly and efficiently sort, analyze and print any information contained within the system's database. As such, your request for the above records should not be considered overly burdensome or labor intensive.

Also, you believe the School is unwilling to comply with your records request. You believe that you could reword and resubmit your request for information and still come up with the same results.

I sent a copy of your complaint to the School. Mr. Jon Bailey, representing the School, responded by stating that the School does not have the records you requested, as stated in its response of February 26. With respect to the creation of reports that do not exist, the School is not required to create reports that do not exist or answer questions except to the extent that an existing public record contains the answer to the question. In fact, the School did offer to provide existing public records that came closest to a response to the requests. However, the School does not use Rediker. I enclose a copy of the School's response for your reference.

#### 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 ("APRA"). Ind. Code 5-14-3-3(a). A request for a record must identify the record with reasonable particularity. IC 5-14-3-3(a). A public agency that maintains or contracts for the maintenance of public records in an electronic data storage system must make reasonable efforts to provide to a person a copy of all disclosable data contained in the records on paper, disk, tape, drum, or any other method of electronic retrieval if the medium requested is compatible with the agency's data storage system. IC 5-14-3-3(d).

A public agency is not required to create or compile a record that does not already exist. This is because the APRA requires that a public agency disclose a public record, which is defined as any material that is "created, received, retained, maintained, or filed by or with a public agency." IC 5-14-3-2(m). Where paper records are requested, the fact that a public agency is not required to create or compile information is easily understood. However, where records or information are stored in an electronic database that may be manipulated and sorted, the public agency must make "reasonable efforts" to provide a copy of the data. The data are "public records" to be sure. However, the issue raised by your complaint is whether the School is required to generate reports that are sorted in a certain way, where no such report has been generated and retained by the School.

I do not read the Access to Public Records Act to require a public agency to sort or compile data within the database in a specified way at a person's request. A report that has not already been created by the public agency is not required to be compiled electronically merely because a computer program would allow the public agency to do so. Rather, all disclosable data could be provided to the person upon request on a disk, and the person could sort or analyze the data as he or she sees fit.

Your request #3 states that you would like the information to include individual grades for all students (without a student name) broken out by teacher, school, and year. Your request for withdrawal of students is to be sorted by teacher, school, and year.

I read the School's response to state that the School has not generated a report that contains this specific sorting of information. If this is true, then it is my opinion that the School is not required to generate a specific report sorting the data in the way that you request. However, the School would be required to make reasonable efforts to provide a copy of all disclosable data stored in the database. The School is entitled to charge a fee that is the direct cost of supplying the information on a disk. *See* IC 5-14-3-8(g). In addition, if the School must reprogram the computer to separate nondisclosable data (the students' names) from disclosable data, the School may charge you a fee that is the School's direct cost to reprogram the computer. *See* IC 5-14-3-6(c). "Direct cost" is defined in IC 5-14-3-2(c).

### CONCLUSION

For the foregoing reasons, I find that the Vigo County School Corporation has not violated the Access to Public Records Act by denying you a report that it has not created. However, the School is required to make reasonable efforts to provide a copy of all disclosable data in its database at your request.

Sincerely,

Karen Davis  
Public Access Counselor

cc: Jon M. Bailey