

January 18, 2008

Jodi Tucker
Lighthouse Academies of Indiana
1661 Worcester Road, Suite 207
Framingham, MA 01701

Re: Formal Complaint 08-FC-15; Alleged Violation of the Access to Public Records Act by the Indianapolis Public Schools

Dear Ms. Tucker:

This is in response to your formal complaint alleging Indianapolis Public Schools (“IPS”) violated the Access to Public Records Act (“APRA”) (Ind. Code 5-14-3) by denying you access to records. A copy of IPS’s response to your complaint is enclosed for your reference. It is my opinion IPS has not violated the APRA.

BACKGROUND

In your complaint you allege that you submitted a request to IPS on November 29, 2007 for access to records maintained by IPS. Specifically, you requested a list of the names and addresses by school of the families affected by the IPS school closings scheduled for next school year. You allege that IPS denied your request by electronic mail dated November 29, indicating that the Family Educational Rights and Privacy Act, 20 U.S.C.A. 1232g et seq. does not require disclosure and the IPS Board had established a policy prohibiting IPS from sharing information with commercial entities. You contend that as a non-profit, 501(c)(3) corporation, Lighthouse Academies is not a commercial entity. You filed this complaint on December 21.

IPS responded to your complaint by letter dated January 16 from attorney Roberta Recker. Ms. Recker indicates that following the November 29 request you submitted a request dated December 3, seeking “a list of students that are attending Indianapolis, Indiana Public Schools that include their names, addresses and schools they attend.” Ms. Recker sent you a letter dated December 11 denying your request pursuant to I.C. §5-14-3-3(f), which allows IPS to adopt a policy with respect to disclosure of lists of students for a commercial purpose. IPS has adopted such a policy prohibiting disclosure of such lists to commercial entities for commercial purposes.

Ms. Recker submits that Lighthouse is a commercial entity seeking to use the list of students and addresses for commercial purposes. Ms. Recker cites case law from New Jersey and Connecticut holding that nonprofit, tax-exempt corporations do constitute commercial entities. Further, Ms. Recker contends that the title of the person making the initial request, "Business Development Associate," is evidence that Lighthouse is a commercial entity. Ms. Recker contends that Lighthouse wants to solicit parents for the commercial purpose of inducing them to send their children to Lighthouse's charter school and to use Lighthouse's other products and services, thereby allowing Lighthouse to obtain the governmental funding for each child.

Finally, Ms. Recker contends that even if Lighthouse is not a commercial entity seeking the list for commercial purposes, the statute does not allow IPS to provide copies of the list. Instead, IPS must only permit a person to inspect and make memoranda abstracts from the list.

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." I.C. §5-14-3-1. The IPS 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 IPS 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.

The issue here is whether Lighthouse is a commercial entity seeking the list of students for commercial purposes. If Lighthouse is a commercial entity or seeks to use the list for commercial purposes, the following provision applies:

(f) Notwithstanding the other provisions of this section, a public agency is not required to create or provide copies of lists of names and addresses (including electronic mail account addresses) unless the public agency is required to publish such lists and disseminate them to the public under a statute. However, if a public agency has created a list of names and addresses (excluding electronic mail account addresses) it must permit a person to inspect and make memoranda abstracts from the list unless access to the list is prohibited by law. . . the lists of names and addresses (including electronic mail account addresses) described in subdivisions (1) through (3) may not be disclosed by public agencies to commercial entities for commercial purposes and may not be used by commercial entities for commercial purposes. The prohibition in this subsection against the disclosure of lists for political or commercial purposes applies to the following lists of names and addresses (including electronic mail account addresses):

- ...
- (3) A list of students who are enrolled in a public school corporation if the governing body of the public school corporation adopts a

policy:

(A) with respect to disclosure related to a commercial purpose, prohibiting the disclosure of the list to commercial entities for commercial purposes;

(B) with respect to disclosure related to a commercial purpose, specifying the classes or categories of commercial entities to which the list may not be disclosed or by which the list may not be used for commercial purposes; or

(C) with respect to disclosure related to a political purpose, prohibiting the disclosure of the list to individuals and entities for political purposes.

A policy adopted under subdivision (3)(A) or (3)(B) must be uniform and may not discriminate among similarly situated commercial entities. . .

I.C. §5-14-3-3(f).

You contend that as a nonprofit tax-exempt corporation, Lighthouse is not a commercial entity and as such may not be prohibited from receiving the requested information. The APRA does not provide a definition for “commercial.” “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. 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. App. 1991). “Commercial” is defined as “[o]f or belonging to trade” or “[m]ade or put up for market.” *New Illustrated Webster’s Dictionary of the English Language*, Pamco Publishing Company, Inc. 1992, at 202.

Ms. Recker contends, and I believed it is a valid argument, that Lighthouse intends to use the list to contact or market to families the services and products Lighthouse offers, whether it be the charter school option or other products. The argument is bolstered by the fact that the person for Lighthouse who initially requested the list carries the title “Business Development Associate,” which is generally a title given to an employee charged with bringing in new business. Based on the definition “made or put up for market,” it is my opinion a nonprofit, tax-exempt entity that markets its products or services with the intent to encourage others to utilize or purchase its products or services is a commercial entity. And marketing those products or services would therefore be a commercial purpose. As such, it is my opinion IPS appropriately applied I.C. §5-14-3-3(f) to your request in denying you access to the list.

Finally, I agree with Ms. Recker’s assertion that the APRA does not require IPS to provide a copy of the list. Even if Lighthouse were not a commercial entity, Lighthouse would be entitled only to inspect the list and make memoranda abstracts, as provided in the APRA. I.C. §5-14-3-3(f).

CONCLUSION

For the foregoing reasons, it is my opinion the IPS has not violated the APRA.

Best regards,



Heather Willis Neal
Public Access Counselor

cc: Robert Recker, Baker & Daniels LLP
Mary Louise Bewley, Indianapolis Public Schools