



STATE OF INDIANA

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July 22, 2010

Mr. Wayne M. O'Hara
1072 Jackson Branch Rd.
Nashville, IN 47448

Re: Formal Complaint 10-FC-150; Alleged Violation of the Access to Public Records Act by the Monroe County School Corporation

Dear Mr. O'Hara:

This advisory opinion is in response to your formal complaint alleging the Monroe County School Corporation (the "Schools") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-3 *et seq.*, by denying you access to public records.

BACKGROUND

In your complaint, you allege that you requested "all documentation of negotiations and meetings relating to Brown County's participation in the Region 8 Adult Education program." You state that "no data was provided as requested."

My office forwarded a copy of your complaint to the Schools, but as of today we have not received a response. However, in reviewing the email messages between you and Ms. Sherry Dick, director of the Schools' adult education program, it appears that Ms. Dick referred you to another entity for the requested information.

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. The Schools are a "public agency" under the APRA. I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy the Schools' public records during regular business hours unless the public records are excepted from disclosure as nondisclosable under the APRA. I.C. § 5-14-3-3(a).

Here, it is unclear whether the Schools have any records responsive to your request. If the Schools do not have any records, Ms. Dick did not violate the APRA by referring you to another agency that might possess such documentation. If a public agency has no records responsive to a public records request, the agency does not violate the APRA by denying the request. “[T]he APRA governs access to the public records of a public agency that exist; the failure to produce public records that do not exist or are not maintained by the public agency is not a denial under the APRA.” *Opinion of the Public Access Counselor 01-FC-61*; see also *Opinion of the Public Access Counselor 08-FC-113* (“If the records do not exist, certainly the [agency] could not be required to produce a copy....”).

However, if the Schools do maintain the records you requested, the Schools should produce those records to you unless an exception to the APRA permits or requires the Schools to withhold them. I encourage the Schools to either affirmatively state that they have no such documentation or cite to an exception that authorizes the Schools to withhold the records. If the Schools cannot do either of those things, I encourage the Schools to provide you with all responsive records as soon as practicable.

As I stated in my prior advisory opinion regarding your complaint against the Brown County School Corporation, to the extent that an agency fails to grant access to public records following the issuance of an advisory opinion from this office, a complainant’s remedies lie with a court pursuant to Ind. Code § 5-14-3-9(e).

CONCLUSION

For the foregoing reasons, it is my opinion that if the Schools maintain non-exempt, responsive records and failed to produce them to you, the Schools violated the APRA. If the Schools do not maintain any responsive records, the Schools did not violate the APRA by referring you to another agency.

Best regards,



Andrew J. Kossack
Public Access Counselor

Cc: Sherry Dick