



STATE OF INDIANA

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September 30, 2010

Wendella K. Brant
9240 E. 350 S.
Zionsville, IN 46077

Re: Formal Complaint 10-FC-197; Alleged Violation of the Access to Public Records Act by Zionsville Community Schools

Dear Ms. Brant:

This advisory opinion is in response to your formal complaint alleging Zionsville Community Schools ("ZCS") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-3 *et seq.* ZCS' response is enclosed for your reference.

BACKGROUND

In your complaint, you allege that you submitted five (5) separate requests for public records to ZCS on August 18, 2010. The next day, Liz Drake, assistant to ZCS Superintendent Dr. Scott Robison, responded to your requests with an email acknowledgement that ZCS received your requests and forwarded them to the ZCS legal counsel for review. In your August 19th reply to Ms. Drake's email, you asked why the requests were being reviewed by counsel and when ZCS expected to provide the documents. On August 25th, Ms. Drake sent you another email. That message informed you that ZCS intended to produce the documents you requested within a reasonable period of time. You replied to that message the same day to inquire as to what ZCS considered a reasonable amount of time. You claim that on August 30th, you had received "[n]o documents and no code [was] cited [by ZCS] for non-compliance." You appear to allege that ZCS violated the APRA by failing to provide you with the records within seven days.¹

Attorney Alan McLaughlin responded to your complaint on behalf of ZCS. He states that Ms. Drake contacted you on August 30th to inform you that all responsive

¹ Your complaint contains allegations regarding ZCS' alleged failure to release its "proposed 2011 budget." However, as Mr. McLaughlin notes in his response, it does not appear that any of your requests sought access to the ZCS budget. Consequently, I decline to address that allegation here because it is not apparent that ZCS ever *denied* any request to access the budget within the meaning of Ind. Code § 5-14-5-6.

documents were copied and available to you at the ZCS administrative offices. The next day, you came to the office and received the documents. Mr. McLaughlin states that ZCS is aware of no documents responsive to your requests that it withheld or failed to produce. He argues that ZCS responded to your requests within a reasonable amount of time when it produced the records within eight business days. He notes that ZCS required that amount of time due to the breadth of your requests²; the large number of responsive documents (166) that had to be prepared for disclosure; the fact that all records needed to be reviewed to ensure that no confidential information (such as personnel information and individual employees' financial information) was inadvertently disclosed; the fact that ZCS has made multiple reductions in staffing levels due to budget constraints, which leaves fewer employees to respond to requests and prepare records for disclosure; and the fact that ZCS has received 16 public records requests within the last three months, which could require the production of approximately 40,000 documents.

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. ZCS does not dispute that it is 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 ZCS during regular business hours unless the records are excepted from disclosure as confidential or nondisclosable under the APRA. I.C. § 5-14-3-3(a).

Under the APRA, 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 in person and the agency does not respond within 24 hours, the request is deemed denied. I.C. § 5-14-3-9(a). 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 response from the public agency could be an acknowledgement that the request has been received and information regarding how or when the agency intends to comply. Here, Ms. Drake responded to your request within 24 hours in compliance with the APRA.

Notwithstanding the requirements that agencies respond to public records requests within the timeframes specified in section 9 of the APRA, "[t]he APRA does not set any time periods for **producing** public records, merely for responding to the request." *Opinion of the Public Access Counselor 02-FC-09* (emphasis added). The public access

² Mr. McLaughlin notes that your request sought copies of all administrators' contracts and addenda; a copy of the ZCS Employee Health Benefit Plan; a copy of the ZCS Insurance Fund Insurance Trust Joinder Agreement for Long-Term Disability Insurance; a copy of the ZCS Group Term Life Insurance for the superintendent; a copy of the ZCS Group Term Life Insurance for the assistant superintendent and other administrators; copies of the two vehicle order agreements; copies of administrators' memberships in various organizations; and a copy of the Request for Permission to Attend Professional Meeting form, along with per diem information for meetings attended.

counselor has stated repeatedly that records must be produced within a reasonable period of time, based on the facts and circumstances. Considering factors such as the nature of the requests (whether they are broad or narrow), how old the records are, and whether the records must be reviewed and edited to delete nondisclosable material is necessary to determine whether the agency has produced records within a reasonable timeframe. The ultimate burden lies with the public agency to show the time period for producing documents is reasonable. *Opinion of the Public Access Counselor 02-FC-45.*

Here, ZCS produced all records responsive to your request within eight business days. Mr. McLaughlin notes that it took five days for ZCS to locate responsive records and for counsel to review them and determine that they could be released. I understand that you did not believe it was necessary for ZCS to consult with counsel prior to releasing the records. However, schools are highly regulated entities and several laws classify broad categories of school records as confidential. *See, e.g.,* the Federal Educational Rights and Privacy Act (“FERPA”), 20 U.S.C. § 1232(g). Public officials and employees are subject to criminal prosecution for knowingly or intentionally disclosing confidential information. I.C. § 5-14-3-10(a). As a result, it is reasonable -- and advisable -- for school corporations to consult with legal counsel regarding voluminous public records requests. Moreover, I agree with ZCS that requests for personnel file information and financial information should be scrutinized to ensure that no confidential information is inadvertently disclosed. *See* I.C. § 5-14-3-4(a)(5), (12). ZCS produced the documents within 3 business days of confirming that they were fully disclosable and informing you of that determination. Section 7 of the APRA requires a public agency 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). Under the circumstances outlined by Mr. McLaughlin, it is my opinion that ZCS produced the records within a reasonable amount of time.

CONCLUSION

For the foregoing reasons, it is my opinion that ZCS did not violate the APRA.

Best regards,



Andrew J. Kossack
Public Access Counselor

Cc: Alan McLaughlin