



# STATE OF INDIANA

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February 26, 2010

Mr. Thomas K. Hoffman  
One Professional Center  
Suite 306  
Crown Point, IN 46307

*Re: Formal Complaint 10-FC-25; Alleged Violation of the Access to  
Public Records Act by Crown Point Community School  
Corporation*

Dear Mr. Hoffman:

This advisory opinion is in response to your formal complaint alleging that Crown Point Community School Corporation (the "Corporation") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.*, by denying you access to public records. A copy of the Corporation's response to your complaint is enclosed for your review.

## BACKGROUND

In your complaint, you allege that on December 10, 2009, you requested a copy of a leadership assessment that was provided to the Corporation's superintendent and several principals at a leadership conference in October or November of 2009. You further allege that the Corporation responded to your request on January 4, 2010, but did not provide the assessment. You claim, "According to reliable sources, the document requested was removed from the school corporation records and taken home. The superintendent also then instructed the principals who had copies of the assessment to take their copies home." You argue that the assessment was created for the Schools and should have been maintained as part of its records.

My office forwarded a copy of your second complaint to the Schools. The Corporation's attorneys, Steven R. Crist and Cheryl A. Zic, deny that the Corporation violated the APRA. They acknowledge that the Corporation received your December 10, 2009, request for the superintendent's employment contract and for the "Evaluation Report prepared by The Table Group at the recent leadership conference at Hobart High School." The Corporation responded to your request within one week and provided responsive documents -- including the superintendent's contract and addenda and

extensions to the same -- on January 4, 2010. The Corporation's January 4<sup>th</sup> response also noted that the requested Evaluation Report "did not exist under the name given by the requester or by another name known to the Corporation, or is not retained by the Corporation in the performance of an official function."

The Corporation maintains that no such Evaluation Report exists, and that in your complaint, you refer instead to a "Leadership Assessment." The Corporation claims that you never requested a "Leadership Assessment" and that it never denied you the right to inspect or copy such a document. The Corporation also denies that it maintains any "Leadership Assessment," but suspects that you are referring to documents related to a team-building workshop conducted by an outside company in mid-September 2009. At that session, a licensed psychologist from The Table Group prepared an individualized psychological profile for each participant in response to the participants' completion of an online self-assessment prior to the workshop. Each profile was titled a "Team Assessment Report," and it provided each participant with both his or her own personality profile and an overview of the personality traits and tendencies of the group as a whole without identifying the other group members. Participants also received a booklet to use for note taking. Neither the Table Group nor the participants created a document titled "Evaluation Report" or "Leadership Assessment."

The Corporation argues that the materials either received or created by the participants at the workshop are not subject to disclosure based upon the following exceptions to the APRA: intra-agency advisory or deliberative materials exception under subsection 4(b)(6), the diary, journal or other personal notes exception in subsection 4(b)(7), the personnel file exception under subsection 4(b)(8), and/or the medical record exception under subsection 4(a)(9).

## 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 Corporation does not dispute that it is a public agency for the purposes of the APRA. I.C. § 5-14-3-2(m). Accordingly, any person has the right to inspect and copy the Corporation's public records 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).

Initially, I note that there is a factual dispute between you and the Corporation regarding whether or not the Corporation maintains the Team Assessment Reports. As I do not sit as a finder of fact, I express no opinion on that issue. However, if the Corporation did not and does not maintain the records, it is under no obligation to produce them to you. 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*. I also note that not every record received by any individual within a public agency is automatically also received by the public agency itself, particularly when the individual receives the record at a time and place not regularly associated with the individual’s job or responsibilities. Thus, it is my opinion that if the Corporation’s participants in the Table Group Workshop received the Team Assessment Report and did not forward the reports to the Corporation itself, the reports were not received or maintained by the Corporation within the meaning of the APRA.

Even if the reports were received and/or maintained by the Corporation, it is my opinion that the Corporation acted within its rights under the APRA in denying your request for access to them. The reports are the type of record that, if maintained by the Corporation, would be found in the employees’ personnel files. Subsection 4(b)(8) of the APRA provides public agencies with the discretion to withhold personnel files of their employees (with the exception of the limited information that must be disclosed in 4(b)(8)(A), (B), and (C)). I.C. § 5-14-3-4(b)(8). As the Corporation notes, such an opinion is consistent with a prior opinion by Counselor Neal in *Opinion of the Public Access Counselor 08-FC-151* (opining that an employee’s leadership evaluation report was appropriately included in a personnel file; public agency acted within the discretion provided by subsection 4(b)(8) of the APRA when it denied access to the record on that basis). I also agree with the Corporation that the booklets containing notes taken by the workshop participants are properly excepted from disclosure at the Corporation’s discretion under I.C. § 5-14-3-4(b)(7), which exempts from the APRA’s disclosure requirements “[d]iaries, journals, or other personal notes serving as the functional equivalent of a diary or journal.” Because it is my opinion that the APRA provides the Corporation with the discretion to withhold these records under these subsections, it is unnecessary for me to address the Corporation’s remaining arguments.

#### CONCLUSION

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

Best regards,



Andrew J. Kossack  
Public Access Counselor

Cc: Steven R. Cris and Cheryl A. Zic, Singleton Crist Austgen & Sears, LLP