



STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

PUBLIC ACCESS COUNSELOR
ANDREW J. KOSSACK

Indiana Government Center South
402 West Washington Street, Room W470
Indianapolis, Indiana 46204-2745
Telephone: (317)233-9435
Fax: (317)233-3091
1-800-228-6013
www.IN.gov/pac

March 3, 2010

Mr. Paul T. Berkowitz
Law Offices of Paul T. Berkowitz & Associates, Ltd.
123 W. Madison St.
Suite 600
Chicago, IL 60602

*Re: Formal Complaint 10-FC-29; Alleged Violation of the Access to
Public Records Act by the Westfield Washington School District*

Dear Mr. Berkowitz:

This advisory opinion is in response to your formal complaint alleging that the Westfield Washington School District ("District") violated the Access to Public Records Act ("APRA"), I.C. § 5-14-3-1 *et seq.*, by failing to respond to your¹ request for a bid proposal and associated records. For the foregoing reasons, it is my opinion that if the District failed to respond to your request and/or denied your request for access to public records without a legal basis, the District violated the APRA.

BACKGROUND

In your complaint, you allege that you submitted a request for public records to the District on December 3, 2009. As of December 13, 2009, the District had not responded to your request. You further allege that the District later claimed it was not subject to the APRA and was not obligated to respond to your request.

In response to your complaint, our office was copied on the District's distribution to you of a large number of responsive documents. The District enclosed the documents in a letter dated February 22, 2010. The District did not otherwise respond to your allegations.

¹ You represent the Indiana/Kentucky Regional Council of Carpenters ("IKRCC") in this matter. For simplicity's sake, I consider you and the IKRCC to be the same requester/complainant in this matter and will refer to "you" (and variations thereof) with that understanding throughout this opinion.

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. Although the District apparently initially denied that it is subject to the APRA, it does not continue to dispute that it is indeed a public agency for the purposes of the APRA. In any event, the District is clearly a public agency within the meaning of the APRA. I.C. § 5-14-3-2(m). Accordingly, any person has the right to inspect and copy the District’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).

A request for access to public records may be oral or written. I.C. §5-14-3-3(a); §5-14-3-9(c). If the request is delivered by mail or facsimile and the agency does not respond to the request within seven (7) days of receipt, the request is deemed denied. I.C. §5-14-3-9(b). If the request is delivered in person and the agency does not respond within twenty-four (24) hours, the request is deemed denied. I.C. §5-14-3-9(a). 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.

If a request is made orally, either in person or by telephone, a public agency may deny the request orally. IC 5-14-3-9(c). When the request is made in writing and the agency denies the request, the agency must deny the request in writing and must include a statement of the specific exemption or exemptions authorizing the withholding of all or part of the record and the name and title or position of the person responsible for the denial. I.C. § 5-14-3-9(c).

Here, it is unclear to me why the District failed to initially respond to your request. Whatever the reason, if the District failed to respond to your request in accordance with section 9 of the APRA, it violated the APRA. I also note that under the APRA, a public agency that withholds a public record bears the burden of showing that the record is exempt. I.C. §§ 5-14-3-1, 5-14-3-9(f) and (g). Exceptions to disclosure are narrowly construed against the public agency. I.C. § 5-14-3-1.

I trust the District’s production of responsive records -- albeit subsequent to your complaint -- resolves this dispute. However, if the District persists in its denial of access following the issuance of an advisory opinion from this office, you are free to pursue your remedies before a court pursuant to Ind. Code § 5-14-3-9(e).

CONCLUSION

For the foregoing reasons, it is my opinion that if the District received your request and failed to respond to it in accordance with section 9 of the APRA, the District violated the APRA.

Best regards,

A handwritten signature in black ink that reads "Andrew J. Kossack". The signature is written in a cursive, slightly slanted style.

Andrew J. Kossack
Public Access Counselor

Cc: Phil Passen, Meyer Najem, Inc.