



# STATE OF INDIANA

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January 3, 2011

Mr. William A. LaFever  
518 N. 750 W.  
Hobart, IN 46342

*Re: Formal Complaint 10-FC-306; Alleged Violation of the Access to Public Records Act by the Union Township School Corporation*

Dear Mr. LaFever:

This advisory opinion is in response to your formal complaint alleging the Union Township School Corporation (the "UTSC") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* The UTSC's response to your complaint is enclosed for your review.

## BACKGROUND

In your complaint, you allege that you submitted a records request dated November 14, 2010, to the UTSC. Your original request sought access to "copies of all documents collected for proof of residency for all transfer students and students in questions [sic]."

On November 19th, UTSC Supt. John Hunter responded to your request via email. He acknowledged receiving it and informed you that he would determine by November 23rd whether or not the UTSC maintained responsive records that were disclosable. On November 23rd, Supt. Hunter sent you another email requesting that you provide additional specificity regarding your request. He stated that UTSC was unclear about what you meant by "transfer students and students in question." He asked you to narrow the students subject to your request and provide the period of time to which your request related. He also offered to speak with you via telephone to obtain clarification. On November 24th, Supt. Hunter sent you a third email. In it, he confirmed that the two of you had communicated via the telephone on November 23rd. You narrowed the scope of your request to certain students. Supt. Hunter further informed you that his office was in the process of retrieving responsive records and that he would be in contact with you again soon. You filed your complaint on December 1st.

Attorney Cheryl A. Zic responded to your complaint on behalf of the UTSC. She argues that the UTSC did not violate the APRA because it responded to your request in a timely fashion. Specifically, although your request was dated November 14th, it was not submitted to the UTSC until November 19th, which was the same day that Supt. Hunter responded to you via email. She also claims that the UTSC provided you with responsive records within a reasonable period of time in light of the fact that responsive records contained information that is confidential under the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g *et seq.* (“FERPA”). The UTSC needed time to redact all confidential information prior to releasing the records.

## 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 UTSC does not contest that it is a “public agency” under the APRA. I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy the UTSC’s 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).

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 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 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. Thus, if the UTSC responded to your request the same day the UTSC received it, the UTSC satisfied the requirements of section 9.

Moreover, in my opinion it was appropriate for the UTSC to request clarification of your original request. Under the APRA, “[a] request for inspection or copying must . . . identify with reasonable particularity the record being requested. . . .” I.C. § 5-14-3-3(a). It is my understanding that you provided such clarification on November 23rd.

There are no prescribed timeframes when the records must be actually produced by a public agency. The public access 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, the UTSC cites to the fact that the responsive records contained information that is confidential under FERPA. Section 6 of the APRA requires public agencies to separate confidential information from disclosable information before

releasing records. Accordingly, it was appropriate for the UTSC to delay releasing responsive records until that process was completed. You submitted your original request on November 19th. The UTSC obtained clarification about that request on November 23rd, and provided you with responsive records on Monday, December 6th. Ms. Zic notes that the UTSC offices were closed on November 25th and 26th due to the Thanksgiving holiday, and the Supt. Hunter was away from the office on school business on December 1st, 2nd, and 3rd. Supt. Hunter mailed you the UTSC's response the next business day: December 6th. Under such circumstances, it is my opinion that the UTSC provided you with responsive records within a reasonable period of time. Consequently, the UTSC did not violate the APRA.

### CONCLUSION

For the foregoing reasons, it is my opinion that the UTSC did not violate 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: Cheryl A. Zic