



STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

PUBLIC ACCESS COUNSELOR
JOSEPH B. HOAGE

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

September 15, 2011

Mr. Richard E. Volbrecht, Jr.
9221 Parkway Drive
Highland, Indiana 46322

Re: Formal Complaint 11-FC-232; Alleged Violation of the Access to Public Records Act by Ivy Tech College

Dear Mr. Volbrecht:

This advisory opinion is in response to your formal complaint alleging that Ivy Tech College ("College") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* James Clark, Assistant General Counsel, responded on behalf of the College. His response is enclosed for your reference.

BACKGROUND

In your complaint, you allege that you submitted a request in writing on August 31, 2011 to the College for records concerning acceptable SAT and ACT scores. As of September 8, 2011, the date you filed your formal complaint with the Public Access Counselor's Office, you maintain you have yet to receive a response of any kind from the College.

In response to your formal complaint, the College advised that it never received your records request.

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." *See* I.C. § 5-14-3-1. The College is a public agency for the purposes of the APRA. *See* I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy the College's public records during regular business hours unless the records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. *See* I.C. § 5-14-3-3(a).

The College maintains that it did not receive a request from you. If the College did not receive your request, it was not obligated to respond to it. As previous Public Access Counselor's have provided, the Public Access Counselor is not a finder of fact. *See Opinion of the Public Access Counselor 10-FC-15.* Consequently, I express no opinion as to whether or not College received your request. Under the APRA, if a 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. *See I.C. § 5-14-3-9(b).* A public agency may deny a request if: (1) the denial is in writing or by facsimile; and (2) the denial includes: (A) a statement of the specific exemption or exemptions authorizing the withholding of all or part of the public record; and (B) the name and the title or position of the person responsible for the denial. *See I.C. §5-14-3-9(c).* If the College received your request and did not respond to it within these timeframes, the College violated the APRA by failing to provide you with a response within seven (7) days that satisfied the requirements of section 9(c) of the APRA.

I trust that the College will respond to your request in accordance with the APRA. If you want to ensure that your request reaches the College in the future, I would advise you to send it via certified mail or make arrangements for your request to be hand-delivered to the College. The College has noted that the information you have requested is maintained by the College on its website (Ivytech.edu/compass) and has provided a copy for you with its response.

CONCLUSION

For the foregoing reasons, it is my opinion that the College did not violate the APRA if it never received your request.

Best regards,

A handwritten signature in black ink, appearing to read "Joe Hoage". The signature is stylized with a large initial "J" and "H".

Joseph B. Hoage
Public Access Counselor

cc: James Clark