



STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

PUBLIC ACCESS COUNSELOR
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May 21, 2012

Mr. Eric A. Welch
DOC 208833
P.O. Box 1111
Carlisle, Indiana 47838

Re: Formal Complaint 12-FC-116; Alleged Violation of the Access to Public Records Act by the Marion Community Schools

Dear Mr. Welch:

This advisory opinion is in response to your formal complaint alleging that the Marion Community Schools ("School") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Stephen L. Edwards, Superintendent, responded on behalf of the School. His response is enclosed for your reference.

BACKGROUND

In your formal complaint, you allege that you mailed a written request for records to the School on April 23, 2012. As of May 14, 2012, the date you filed your formal complaint with the Public Access Counselor's Office, you further allege that you have yet to receive any response from the School.

In response to your formal complaint, Superintendent Edwards provided that the School has no record of receiving a records request from you.

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 School 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 School'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).

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 the School 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 School received your written request and did not respond to it pursuant to the timeframes provided in section 9, it violated the APRA. However, if the School did not receive your request, it was not obligated to respond to it.

CONCLUSION

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

Best regards,

A handwritten signature in black ink, appearing to read "J. Hoage". The signature is written in a cursive style with a large initial "J" and a distinct "Hoage" following.

Joseph B. Hoage
Public Access Counselor

cc: Stephen L. Edwards