



# 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

August 6, 2012

John P. Griffin  
1828 N. Meridian Street, Suite 205  
Indianapolis, Indiana 46202

*Re: Formal Complaint 12-FC-193; Alleged Violation of the Access to Public Records Act by the Metropolitan School District of Warren Township*

Dear Mr. Griffin:

This advisory opinion is in response to your formal complaint alleging the Metropolitan School District of Warren Township ("District") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* David Day, Attorney, responded on behalf of the District. His response is enclosed for your reference.

## BACKGROUND

In your formal complaint, you allege that on March 19, 2012, your written request for records was received by the District. On March 26, 2012, the District responded in writing to your request and acknowledged its receipt. As of July 11, 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 records.

In response to your formal complaint, Mr. Day advised that the delay in responding to your written request for records was untimely and inconsistent with the APRA. By way of explanation, but not as an excuse, the request was received at the beginning of the Spring Break. Through inadvertence by all parties involved, the request was not properly addressed. Once the District received your formal complaint, it quickly assembled all records that were responsive to the original request and said records have now been provided to you via U.S. Mail.

## 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 District 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 District'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).

A request for records may be oral or written. *See* I.C. § 5-14-3-3(a); § 5-14-3-9(c). If the request is delivered in person and the agency does not respond within 24 hours, the request is deemed denied. *See* I.C. § 5-14-3-9(a). 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. *See* I.C. § 5-14-3-9(b). A response from the public agency could be an acknowledgement that the request has been received and include information regarding how or when the agency intends to comply. Here, the District responded in writing within seven (7) days of receiving your written request for records. As such, it is my opinion that the District complied with the requirements of section 9(b) of the APRA in responding to your request.

Effective July 1, 2012, the APRA provides a public agency shall provide records that are responsive to the request within a reasonable time. *See* I.C. § 5-14-3-3(b). The public access counselor has stated that factors to be considered to be considered in determining if the requirements of section 3(a) under the APRA have been met include, 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 APRA requires an agency to separate and/or redact confidential information in public records before making the disclosable information available for inspection and copying. *See* I.C. § 5-14-3-6(a). Section 7 of the APRA requires a public agency to regulate any material interference with the regular discharge of the functions or duties of the public agency or public employees. *See* I.C. § 5-14-3-7(a). However, Section 7 does not operate to deny to any person the rights secured by Section 3 of the Access to Public Records Act. *See* I.C. § 5-14-3-7(c). The ultimate burden lies with the public agency to show the time period for producing documents is reasonable. *See Opinion of the Public Access Counselor 02-FC-45*. This office has often suggested a public agency make portions of a response available from time to time when a large number of documents are being reviewed for disclosure. *See Opinions of the Public Access Counselor 06-FC-184; 08-FC-56; 11-FC-172*. Further nothing in the APRA indicates that a public agency's failure to provide "instant access" to the requested records constitutes a denial of access. *See Opinions of the Public Access Counselor 09-FC-192 and 10-FC-121*.

The District acknowledges that its response to your request was untimely and inconsistent with the APRA. Accordingly, it is my opinion that the District failed to provide all records that were responsive to your request within a reasonable period of time as required by I.C. § 5-14-3-3(b). The District has provided that its actions were inadvertent and it has now produced to you all records that were responsive to your request, which I hope is in satisfaction of your complaint.

## CONCLUSION

For the foregoing reasons, it is my opinion that the District failed to provide all records that were responsive to your request within a reasonable period of time as required by I.C. § 5-14-3-3(b). As to all other issues, it is my opinion that the District complied with the requirements of the APRA.

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: David R. Day