



STATE OF INDIANA

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September 21, 2012

Brian Vukadinovich
1129 E. 1300 N.
Wheatfield, Indiana 46392

Re: Formal Complaint 12-FC-241; Alleged Violation of the Access to Public Records Act by the Hanover Community School Corporation

Dear Mr. Vukadinovich:

This advisory opinion is in response to your formal complaint alleging the Hanover Community School Corporation ("School") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Joanne Rogers, Attorney, responded on behalf of the School to your formal complaint. Her response is enclosed for your reference.

BACKGROUND

In your formal complaint, you allege that on June 18, 2012, you submitted a written request to the School for "All information that was submitted by the law firm Newby, Lewis, Kaminski, and Jones, wherein this firm was selected to represent the Hanover Community School Corporation to include, but not limited to, any and all agreements, fee structures, and travel allowances, etc." In response to your request, the School provided a copy of correspondence from the law firm, but no further financial information. On July 19, 2012 and August 16, 2012, you inquired with the School's attorney regarding your request, but received no response. You believe that the School has failed to provide all records that were responsive to your request.

In response to your formal complaint, Ms. Rogers advised that the School has provided all records that were responsive to your request. The School Board moved to employ Mr. Kaminski as the agency's attorney at a special meeting conducted on May 22, 2012. Enclosed, the School has provided copies of the minutes from said meeting. Ms. Rogers advised that there is currently not a contract in place for Mr. Kaminski's services, nor has he been paid by the School since his appointment on May 22, 2012. A contract for his services will be presented at the next regular School Board meeting on October 9, 2012.

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).

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 twenty-four 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 days of receipt, the request is deemed denied. *See* I.C. § 5-14-3-9(b). Under the APRA, when a request is made in writing and the agency denies the request, the agency must deny the request in writing and 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. *See* I.C. § 5-14-3-9(c). 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.

Generally, if a public agency has no records responsive to a public records request, the agency generally does not violate the APRA by denying the request. “[T]he APRA governs access to the public records of a public agency that exist; the failure to produce public records that do not exist or are not maintained by the public agency is not a denial under the APRA.” *Opinion of the Public Access Counselor 01-FC-61*; *see also Opinion of the Public Access Counselor 08-FC-113* (“If the records do not exist, certainly the [agency] could not be required to produce a copy....”). Moreover, the APRA does not require a public agency to create a new record in order to satisfy a public records request. *See Opinion of the Public Access Counselor 10-FC-56*. As applicable here, the School has provided that it has produced all records that are responsive to your request. Ms. Rogers has advised that although the School Board has moved to employ Mr. Kaminski, there is currently no contract in place, nor has he received any payment for his services. As such, it is my opinion that the School did not violate the APRA if it produced all records that it currently maintains that are responsive to your request. Ms. Rogers has indicated that a contract for Mr. Kaminski’s services will be presented for School Board approval on October 9, 2012; to which I would encourage you to renew your request for records after such date.

CONCLUSION

For the foregoing reasons, it is my opinion that the School did not violate the APRA if it produced all records that it currently maintains that are responsive to your 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 long, sweeping underline.

Joseph B. Hoage
Public Access Counselor

cc: Joanne Rogers