



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

February 7, 2012

Ms. Kim K. Kilbride
South Bend Tribune
1301 E. Douglas Road
Mishawaka, Indiana 46544

Re: Formal Complaint 12-FC-32; Alleged Violation of the Access to Public Records Act by the School City of Mishawaka

Dear Ms. Kilbride:

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

BACKGROUND

In your formal complaint, you allege that the School has consistently denied your request for access to the twice-monthly personnel reports created by the School that are provided to all School Board members prior to the Board's meetings. The School has further been unresponsive to your request for what statute allows it to deny your request. In a phone conversation with Superintendent Terry Barker on January 23, 2012, he inquired why you wanted the reports. You maintained that you did not feel that was applicable to your request to which he responded that until the Board approves the report, it was not a public record.

In response to your formal complaint, Mr. Barker advised that he now does not believe that I.C. § 5-14-3-4(b)(6) is applicable to the personnel reports that are submitted to the School Board. Based upon this clarification, the report will now be provided to all news media along with the customary items that are part of the Board's meeting packets.

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. The APRA prohibits a public agency from denying records requests because the requester refuses to state the purpose of the request, unless such condition is required by other applicable statute. *See* I.C. § 5-14-3-3(a)(2). Here the School acted contrary to the APRA when it denied your request for the personnel report and failed to cite to the specific exemption authorizing it to withhold the record. As the School has advised that the reports would now be made available prior to all Board meetings, I trust that this is in satisfaction of your complaint.

CONCLUSION

For the foregoing reasons, it is my opinion that the School violated section 9(c) of the APRA by failing to cite to the specific exemption or exemptions authorizing the withholding of the record that was sought.

Best regards,



Joseph B. Hoage
Public Access Counselor

cc: Terry Barker