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

April 9, 2012

The Banner
Eric M. Cox, Owner and Publisher
24 N Washington
Knightstown, Indiana 46148

Re: Formal Complaint 12-FC-63; Alleged Violation of the Access to Public Records Act by the Charles A. Beard Memorial School Corporation

Dear Mr. Cox:

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

BACKGROUND

In your formal complaint, you allege that the School violated the APRA by denying *The Banner's* request for access to certain public records, by failing to notify *The Banner* that some records that were responsive to your request were not being provided, and by the School failing to protect its public records from loss, alteration, mutilation, or destruction.

The Banner filed a written public records request with the School on December 15, 2011, via hand-delivery. After not receiving a response, *The Banner* contacted then-Superintendent Gary Storie on January 6, 2012. While Mr. Storie recalled receiving the request, he was unable to locate it. On January 6, 2102, an additional copy of the request was submitted to Mr. Storie, via facsimile. The request, in part, sought:

> "Access to inspect full and complete, unredacted copies of all correspondence, including e-mails and their attachments, if any, that Jena Schmidt had sent to, or received from Mike McKillip since July 1, 2010."

On January 16, 2012, Mr. Storie advised that he had only located three e-mails that were responsive to the request. You thereafter received copies of e-mails from Mr. Storie.

Upon reviewing the records that were produced, *The Banner* immediately had concerns. Two of the e-mails did not have headers at the top showing basic information, such as the date and time sent or received. Further, all three e-mails that were provided were from Ms. Schmidt to Mr. McKillip, with no responses included. Jeff Eakins, a reporter for *The Banner*, immediately followed up with Mr. Storie regarding the concerns and reminded Mr. Storie that the request was for all correspondence going back to July 1, 2010. In response, Mr. Storie provided that he had only searched for correspondence going back to July 2011. Mr. Storie indicated that he would make a further search and attempt to produce the records by January 17-18, 2012. Mr. Storie resigned from the School on January 18, 2012. Prior to his departure, he did not provide any additional records that were responsive to *The Banner's* request. Mr. Scheumann was appointed by the School as its interim Superintendent on January 18, 2012.

On January 23, 2012, Mr. Eakins met with Mr. Scheumann to discuss the status of the pending records requests. Mr. Eakins advised Mr. Scheumann that Mr. Storie had only checked for e-mail correspondence going back to July 2011, not July 2010 as requested. Further, Mr. Eakins expressed concern whether the three e-mails that had been produced accounted for all records that were responsive to the request. Following the meeting, Mr. Eakins sent Mr. Scheumann an e-mail on February 2, 2012 that detailed *The Banner's* position regarding various record requests filed with the School between September 1, 2011 and January 23, 2012.

On February 3, 2012, the School provided to *The Banner* forty pages of e-mail correspondence between Ms. Schmidt and Mr. McKillip. In addition to the three e-mails that had already been provided, the records that were produced contained nineteen other emails, the earliest of which was dated April 26, 2011, thirteen of which were dated after July 1, 2011. On February 6, 2012, Mr. Eakins contacted Mr. Scheumann regarding the School latest response and followed up the conversation with an e-mail two days later. In addition to raising issues regarding redactions that were believed to be improper, Mr. Eakins pointed out that the earliest e-mail correspondence provided by the School was dated April 26, 2011; again noting that the request sought records going back to July 1, 2010.

On February 10, 2012, Mr. Scheumann responded to *The Banner's* concerns and provided:

> "The CAB archival system was put in place in April 2011. Therefore, you have received all available records. Additionally, former PAC stated "It is important to remember that electronic e-mail is a method of communication and not a type of record." Therefore, we believe we have provided more than required."

Mr. Scheumann's admission on February 10, 2012 was the first time anyone from the School had advised that some of the requested e-mails were no longer available. Mr. Eakins thereafter responded to Mr. Scheumann's correspondence and sought specific

information about what had "happened to all of the Schools e-mails that were created before the archive system was put in place in April 2011."

During a phone conference call with Mr. Scheumann and Ms. Schmidt on February 13, 2012, Mr. Eakins again inquired regarding the status of those e-mails created prior to April 2011. Mr. Eakins was informed that he would need to check with Brian Woods, the School's Technology Director. Mr. Eakins specifically asked Ms. Schmidt if she had deleted any e-mails from her School e-mail account. She initially provided that she and Mr. Scheumann would check with Mr. Woods regarding the matter, and thereafter provided a "No Comment." On February 15, 2012, Mr. Eakins e-mailed Mr. Scheumann for a status update regarding whether Ms. Schmidt had ever deleted any e-mail correspondence. Mr. Scheumann replied that the archive system commenced on March 16, 2011 and he believed that "there are no e-mails that can be retrieved" from before that date.

On February 16, 2012, Mr. Eakins spoke with Mr. Woods regarding the archive system. Besides the archive system, Mr. Woods explained that e-mails sent and received by School employees, both before and after March 16, 2011, were also stored in individual Outlook Express e-mail accounts maintained on the School's exchange server. School employees did have the capability to delete e-mails from their password-protected Outlook Express accounts on the exchange server. Mr. Woods further advised that he had not be asked to determine whether any e-mails had been deleted from Ms. Schmidt's or Mr. McKillip's accounts, or whether any e-mails from prior to the establishment of the archive system were retrievable.

Mr. Eakins thereafter e-mailed Mr. Scheumann regarding the concerns why Mr. Woods had not been asked to look into these specific issues. If he had not asked Mr. Woods to investigate the relevant issue, Mr. Eakins asked Mr. Scheumann what made him believe that e-mails prior to March 16, 2011 were not available, and again if any emails from Ms. Schmidt or Mr. McKillip had been deleted from either the archive or exchange server. If the records were no longer available, Mr. Eakins inquired what steps were being taken to determine what had happened to the e-mails sent and received prior to March 16, 2011.

Mr. Scheumann responded on February 20, 2012 and confirmed he had not inquired with Mr. Woods to investigate the e-mail situation at the time Mr. Eakins had spoken with Mr. Woods on February 16, 2012. Mr. Scheumann indicated that he had discussed the current archive system with the technology director and was continuing to gather more information. Mr. Eakins responded to Mr. Scheumann with two e-mails sent the same day, asking several specific questions about the Schools e-mail from before March 16, 2011 and his efforts to investigate the situation. On February 23, 2012, Mr. Scheumann provided *The Banner* with a copy of a report dated February 21, 2012 that he had sent to School Board members about the situation. *The Banner* believes that Mr. Scheumann's report fails to address the concerns expressed to the School on multiple occasions. On February 23, 2012, Mr. Eakins spoke with Mr. Scheumann again in an attempt to receive answers to previously referred to inquiries. As Mr. Scheumann

continued to specifically address the issues that were presented, *The Banner* filed a formal complaint with the Public Access Counselor's Office.

As to Mr. Storie failing to provide all records that were responsive to *The Banner's* request, he did not indicate at the time that he was still gathering additional records or that there were certain records that were responsive to the request that he had opted not to provide. There is no denying that Mr. Storie's initial response was not complete. Records later provided by Mr. Scheumann clearly show that there were many other records responsive to *The Banner's* request. The request submitted to the School requested that the School notify *The Banner* if there were any responsive records that were not being provided and to cite to any specific statutory reasons justifying the withholding. The records produced by Mr. Storie did not contain all records that were responsive to *The Banner's* request and Mr. Storie failed to cite to the records not being provided and any statutory justification for the denial.

As to the production by Mr. Scheumann of the additional correspondence between Ms. Schmidt and Mr. McKillip, he did not provide that certain records that were requested were not available. There was no indication from Mr. Scheumann that the records he was providing were anything other than a complete response to the request. Upon discovery that Mr. Scheumann's disclosure did not contain any records prior to April 26, 2011, *The Banner* submitted correspondence to the School regarding the details of the initial request. Only then, did the School mention that certain records that were not available due to issues with the archival system. In Mr. Scheumann's report to the School Board, he claimed he had determined that e-mails prior to March 16, 2011 were not present, and therefore, not retrievable. *The Banner* should have been notified the deficiencies of the School's response to its request for public records. As such, the School violated the APRA in its supplementary production of records provided by Mr. Scheumann.

I.C. § 5-14-3-7 requires public agencies to protect their public records, even those in an electronic form, from loss, alteration, mutilation, or destruction. The School failed to comply with the statue in regards to its employees' email correspondence. The wholesale failure by the School to preserve the correspondence is a violation of the APRA. The School has not notified the Henry County Commission on Public Records that it has deleted any e-mails or other correspondence of Ms. Schmidt, Mr. McKillip, or any other School employee.

In response to your formal complaint, Mr. Day initially advised that *The Banner* had submitted 10 records requests since August 11, 2011 that included at least 65 separate items and 46 sub-categories of items. As noted by *The Banner*, Mr. Storie left his employment with the School during the pendency of the records request. *The Banner* frequently submits inquiries regarding its open records requests, sometimes on a daily basis, and the School engages in an open dialogue regarding the status of the requests. Mr. Day provided that prior opinions of the Public Access Counselor have advised that the submission of numerous requests slows down and complicates the responsiveness of a public agency. Further, the same opinion notes that a public agency cannot devote the

majority of its time or resources to fulfilling records request as it must regulation any material interference with its regular discharge of duties. Further, the Public Access Counselor has encouraged communication by the public agency with the requestor, which the School has clearly done so in regards to *The Banner's* requests.

As to the request at issue, the School provided records in response to your request on two separate occasions. After Mr. Storie's disclosure, he acknowledged he mistakenly limited his search from July 2011, not July 2010 as requested. Mr. Storie indicated he would conduct a further search and inform *The Banner* of the results. However, Mr. Storie left his employment with the School on January 18, 2012.

Mr. Scheumann was appointed as the interim superintendent on January 19, 2012. In light of his new position, he had a number of important tasks to undertake in transition beyond responding to public records request. Mr. Scheumann provided a second set of records on February 6, 2012. Mr. Day notes that public agencies are not required to search through their records, either manually or electronically, to determine what records might contain information that is responsive to a request. *See Opinion of the Public Access Counselor 10-FC-57*. However, the School went beyond the requirements of the APRA and conducted a search regardless.

As to Mr. Storie's production, there is no evidence to suggest that he did not provide all records that he was able to find. He admittedly made a mistake in the parameters of his search, which he sought to rectify upon being informed of the error. Mr. Scheumann's production included records that were not included in Mr. Storie's production. Again, there is no evidence to show that Mr. Storie found these records and withheld them in his response. The School would not violate the APRA by failing to product a record that it did not find. *See Opinion of the Public Access Counselor 12-FC-06.* While *The Banner*'s December 15, 2011 request asked the School to identify what records it would not be providing and the statutory reason that the record was being withheld as required under the APRA, these requests presuppose that a record was found and was not being provided despite being found. But that is not *The Banner's* complaint or what happened here. *The Banner* is asserting that a public agency violates the APRA by not finding a record and then not telling the requesting party that it did not find the record.

If a public agency searches for a record and does not find a record, it cannot provide the record, because no record was found. It cannot say that it is not providing a record that it has found, because no record was found. Further, it cannot give a statutory reason for not providing a record it did not find. *See Opinion of the Public Access Counselor 07-FC-58.* By providing records it finds in response to a request, a public agency fulfills its obligations under the APRA. The agency does not have to add a statement that it is not providing records that it did not find.

The same reasoning applies to the second issue raised by *The Banner* in its formal complaint. Mr. Scheumann expanded the original search and provided the records he found in that expanded search. There is no evidence that he found any record that he did

not provide in response to the request. Instead, *The Banner* complains that Mr. Scheumann did not inform *The Banner* that there were no records found prior to April 2011, a fact that *The Banner* could and did ascertain for itself when it looked at the record. Again, this is not a situation where the School found records and refused to provide them. Instead, the School did not find a record that *The Banner* believes it should have found. The violation being, "failing to notify *The Banner* that some requested records were not being provided."

As to the third issue raised by *The Banner*, the School does not believe that *The Banner* has standing to file a formal complaint based on this issue. There is no allegation that the School failed to provide access to a record. *The Banner* claims the School has an obligation to protect its record and now has standing to file a formal complaint based on this alleged failure. The School has not denied *The Banner* any right to inspect or copy a record because *The Banner* has no obligation to produce a record that it cannot find. The School does acknowledge that it has an obligation to preserve public records in accordance with I.C. 5-15 and if there were email records that constituted public record under I.C. 5-15-, they would need to be preserved. However, not all records that would be public records under I.C. 5-14-3 constitute records covered by I.C. 5-15.

In reply to the School's response, *The Banner* believes that the School's reliance on 10-FC-57 is misplaced in the context of the present complaint. Advisory Opinion 10-FC-57 dealt with a record request that lacked reasonable particularity, which is not applicable here as *The Banner's* request was reasonably particular pursuant to the APRA. Further, the School's belief that it was not required to perform a search is not supported by 10-FC-57. Former Counselor Kossack, quoting a previous informal opinion (08-INF-23) stated that if a reasonably particular request was made of the School, it would be obligated to retrieve those records and provide access to them, minus any exceptions. Here, the request was reasonably particular; as such the School was obligated to retrieve the records that were sought. The School has provided e-mail records in response to records requests submitted by *The Banner* over the course of four different superintendent administrations.

As to the complaint addressing Mr. Storie's responses, *The Banner* believes that the APRA was violated when Mr. Storie only provided three e-mails in response to the December 15, 2011 request; not simply by failing to tell *The Banner* that the response was incomplete. The School's assertion that it has no obligation to provide a record it did not find, presupposes that a proper search was made, and here Mr. Storie did not conduct a proper search. The School has provided no explanation why Mr. Storie's initial search only provided three records in response.

Contrary to the School's assertion, *The Banner* does not believe it would be an absurd exercise for the School to be required to notify it that some of the requested records could not be provided because of the School's failure to properly preserve its records. If not for *The Banner's* follow up efforts, it would have remained unknown that the School's responses were incomplete. The fact that the School can no longer provide

records that are responsive to a request that it was required to retain pursuant to I.C. § 5-14-3-4(e), provides *The Banner* with standing to file a formal complaint.

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. Here, you hand-delivered a written request for records to the School on December 15, 2011. The School was required to respond, in writing, within twenty-four hours of receipt of your hand-delivered written request and acted contrary to section 9 of the APRA when it failed to do so. *See Opinions of the Public Access Counselor 05-FC-176; 11-FC-84; and 11-FC-308.*

The first part of your complaint alleges that the School failed to properly respond to your request for records in regards to Mr. Storie's production of records on January 16, 2012. As an initial note, your request for all e-mail correspondence between Ms. Schmidt and Mr. McKillip, from July 1, 2010 to the present, was reasonably particular pursuant to I.C. § 5-14-3-3(a)(1). *See Opinions of the Public Access Counselor 09-FC-124, 11-FC-12, and 12-FC-44.* Advisory Opinion 10-FC-57, cited by the School, dealt with a request that was not considered to be reasonably particular pursuant to Section 3 of the APRA and thus the agency was not required to search through its records to determine which might contain information responsive to a request. *See Opinion of the Public Access Counselor 10-FC-57.* Here, your request did not necessitate the School to conduct such a search, as you provided the sender, recipient, and date range for the requested e-mail correspondence. Thus, the School is obligated pursuant to the APRA to retrieve those records and provide access to them, minus any applicable exceptions. *Id.*

Mr. Storie's search of the records produced three e-mails. Upon being questioned by *The Banner* regarding the production, Mr. Storie readily acknowledged that he had limited his search from July 2011, as opposed to July 2010. Mr. Storie advised *The*

Banner that he would conduct a further search and provide all records that were responsive. Shortly thereafter, and prior to conducting a subsequent search, Mr. Storie left his employment with the School. In Mr. Scheumann's follow-up search, the School produced thirteen e-mails that were dated after July 1, 2011; records that *The Banner* argues should have been found and produced as part of Mr. Storie's initial search.

Mr. Day provides that there is no evidence to suggest that Mr. Storie did not provide all the records that he was able to find and cites to Advisory Opinion 12-FC-06 for support that a public agency does not violate the APRA by failing to produce a record that it did not find. *See Opinion of the Public Access Counselor 12-FC-06.* Advisory Opinion 12-FC-06 involved a request received by the Marion County Jail ("Jail"). *Id.* In responding to the request, the Jail provided that it did not maintain a record that was responsive to the request. *Id.* It was my opinion that the Jail did not violate the APRA by failing to provide a record that [sic] does not exist. *Id.* Here, Mr. Storie's disclosure of records failed to produce records that did in fact exist. This is evidenced by the School's subsequent disclosure by Mr. Scheumann. Accordingly, I do not believe the factual scenario presented here parallels the facts in Advisory Opinion 12-FC-06.

Mr. Day argues that *The Banner* position is that the APRA requires an agency to include in their response to record requests a statement that "we are not providing records we did not find." It is my opinion that the APRA would not require such a statement; however it is also my opinion that this is not what *The Banner* is arguing and/or alleging. *The Banner* submitted a reasonably particular records request to the School. In response, the APRA provides that the School is required to provide all records that are responsive to the request, minus any exceptions. There is no question that Mr. Storie's production of records on January 16, 2012 failed to produce all records that were responsive to the request that was submitted. Further, there was no indication given by Mr. Storie on January 16, 2012 that he was still gathering additional records or that future production of records would be forthcoming. If such a statement had been made, it would be evident that future disclosures would be forthcoming and the search had not culminated. In addition, had *The Banner* not followed up with the School regarding Mr. Storie's disclosure, the subsequent records that were disclosed would likely have never been produced.

Many of the questions relating to Mr. Storie's disclosure on January 16, 2012 would be readily answered if he still was employed by the School. From what has been presented, Mr. Storie was forthcoming when responding to inquiries by *The Banner*, acknowledging that he only had conducted a search from July 2011 to the present, not July 2010 as requested. However, it is not evident why Mr. Scheummann's disclosure produced records that should have been included in Mr. Storie's initial disclosure, regardless of the confusion regarding the date range requested by *The Banner.* As such, it is my opinion that the School acted contrary to the APRA when it failed to produce all records that were responsive to *The Banner's* request in Mr. Storie's January 16, 2012 disclosure.

The second and third issues presented *The Banner* addressed the alleged failure by the School to properly preserve its public records in accordance with the applicable retention schedules. The APRA requires public agencies to maintain and preserve public records in accordance with applicable retention schedules. *See* I.C. § 5-14-3-4(e). A public agency shall protect public records from loss, alteration, mutilation, or destruction. *See* I.C. § 5-14-3-7(a). A public agency shall further taken precautions that protect the contents of public records from unauthorized access, unauthorized access by electronic device, or alteration. *See* I.C. § 5-14-3-7(b).

This is not the first time that *The Banner* has alleged that the School has failed to properly preserve e-mail correspondence. Advisory Opinion 07-FC-58 dealt with an almost identical allegation. Counselor Davis provided the following analysis:

> A public agency shall protect public records from loss, alteration, mutilation, or destruction. IC 5-14-3-7(a). Notwithstanding IC 5-14-3-4(d)(making confidential records open for inspection 75 years after the record's creation) and IC 5-14-3-7(a), public records subject to Indiana Code 5-15 may be destroyed only in accordance with record retention schedules under Indiana Code 5-15; or public records not subject to Indiana Code 5-15 may be destroyed in the ordinary course of business. IC 5-14-3-4(e).
>
> A public record is any material that is "created, received, retained, maintained, or filed by or with a public agency…regardless of form or characteristics." IC 5-14-3-2(m). Hence, there is no question that the e-mails created and maintained by the CAB are public records of the CAB. Those records are disclosable unless exempt under section 4 of the APRA.
>
> I agree with the CAB that the disclosure and retention of the e-mails is dependent not on the form of the e-mail but rather on the content of the e-mail. I also agree that some e-mail is not subject to retention other than in the ordinary course of business, just as some paper records may be discarded in the ordinary course of business. Specifically, records not subject to IC 5-15 can be destroyed in the ordinary course of business.
>
> That said, it seems that the bulk of CAB's argument is nothing more than a generalized discussion regarding the e-mail accounts of those employees that were lost due to the upgrade or deleted after the departure of the employee, with the result being that the e-mail accounts were destroyed is

consistent with the Clay County retention schedule. I note that the CAB has not provided me a copy of the record retention schedule that the CAB refers to, nor have I been provided a link to the internet page containing the schedule.

In any case, whether the record retention guidelines support the CAB's blanket statement that all e-mail falls into either "cover to an attachment" or "correspondence" (neither of which must be retained beyond the time that the person needs it, according to the CAB, with reference to a Clay County schedule that would not apply to a Henry County school corporation), is beyond the scope of this office's expertise. I find that if any of the individual e-mails were subject to retention under IC 5-15, and were not otherwise destroyed in accordance with record retention schedules under Indiana Code 5-15, then the CAB violated IC 5-14-3-7(a).

The CAB has also asserted that, in spite of the loss of the Zurwell e-mail account, the email accounts of the other correspondents do not show that any e-mail to or from Zurwell existed. If a public agency does not have a public record because one was never created, there is no denial of the record. It simply does not exist.

In addition, *The Banner* argues that the CAB did not properly deny the records because no exemption was cited. This is not valid where the CAB either did not have a record to disclose (as in the case of the non-existent e-mails) or did not retain the e-mail accounts containing emails. In both cases, the CAB explained that no e-mail existed. A public agency is required to cite an exemption only where a record exists but is withheld from disclosure.

Finally, *The Banner* requests that I issue an informal inquiry response with respect to whether the January 22 request should have elicited the e-mails sent to or received by the various correspondents and Zurwell. The letter of January 22 specifically requested "a copy of any and all memos, other correspondence or written communication—whether generated on paper, paper substitutes, electronically stored data or any other medium—sent from Amanda Zurwell to…" (Emphasis supplied.) *The Banner* argues that the CAB failed to either provide the e-mails or to state that none existed. I agree that the e-mail that is the subject of this complaint would have fallen within the

> request of January 22, and accordingly the CAB should have notified the [sic] *Banner* of the loss or non-existence of e-mail when it produced the other records in response to the January 22 request. *See Opinion of the Public Access Counselor.*

I agree with the analysis provided by Counselor Davis in 07-FC-85. A public agency is required to cite to an exemption only where a record exists, but is withheld from disclosure. If there are no records that are responsive to a request, the agency complies with section 9 of the APRA by communicating that fact to the requestor along with providing the name and title or position of the person responding to the request. Further, if an agency is aware that records that would have been responsive to a records request were not properly retained pursuant to the applicable retention schedule, it should notify the requestor of the failure when producing any records that the agency still maintains.

I have not been provided with a copy of the School's retention schedule. Further, I am unable to determine if there was any e-mail correspondence that would have been responsive to *The Banner's* request that was not properly preserved by the School pursuant to the applicable retention schedule. If the School was aware that records that were responsive to *The Banner's* request were unable to be provided due to its failure to comply with I.C. § 5-14-3-4(e), it should have communicated this to *The Banner* at the time of Mr. Scheumann's production on February 3, 2012. If the School failed to inform *The Banner*, it is my opinion that it violated the APRA. Further, if the School failed preserve its records in accordance with the applicable retention schedule and/or failed to protect its records from loss, alteration, or destruction, it is my opinion that it violated I.C. §§ 5-14-3-4(e) and 5-14-3-7.

CONCLUSION

For the foregoing reasons, it is my opinion that the School violated the APRA when it failed to respond in writing to your hand-delivered written request within one day of receipt. Further, it is my opinion that the School violated the APRA when Mr. Storie failed to provide all records that were responsive to your request on January 16, 2012. Further it is my opinion that if the School was aware that records that were responsive to your request were unable to be provided due to the School's failure to comply with I.C. § 5-14-3-4(e), it should have communicated this to you at the time of production on February 3, 2012. Lastly, if the School failed to preserve its records in accordance with the applicable retention schedule and/or failed to protect them from loss, alteration, mutilation or destruction, it acted contrary to I.C. §§ 5-14-3-4(e) and 5-14-3-7.

Best regards,

Joseph B. Hoage
Public Access Counselor

cc: David Day