



STATE OF INDIANA

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April 24, 2012

Mr. Frank Rizzo
2845 45th Street
Highland, Indiana 46322

Re: Formal Complaint 12-FC-79; Alleged Violation of the Access to Public Records Act by the Indiana Department of Education

Dear Mr. Rizzo:

This advisory opinion is in response to your formal complaint alleging the Indiana Department of Education ("DOE") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Christopher Greisl, Legal Counsel, responded on behalf of the DOE. His response is enclosed for your reference.

BACKGROUND

In your formal complaint you allege that on February 9, 2012, you submitted a request for records to the DOE. Your request sought the following records:

1. Licensing history of Barbara Faye Souder-Sneary;
2. Rules for the determination of required licensure by the DPS for providing special education speech services in public schools;
3. Rules stating the agency or individuals responsible for implementing and enforcing the requirements; and
4. Records documenting the procedures for pursuing grievances regarding enforcement of DPAS rules by the DOE.

On March 19, 2012, the DOE provided records that were responsive to your request. You allege that the DOE's reply was not responsive to your (2) and (3) request. As to (2), the records provided by the DOE outlined its procedures to apply for or renew a certain type of license, but did not provide rules for determining if the licensing is required. As to (3), the DOE directed you to the website for the Indiana Legislature. You further maintain that the DOE's response provided you with the requirements of another agency, the Indiana Speech-Language-Hearing Association ("ISLHA"), but did not provide records showing that the DOE has adopted ISLHA's rules or that DOE relies on ISLHA for interpreting and enforcing the DOE rules.

In response to your formal complaint, Mr. Greisl advised that the DOE responded to your request in a timely manner and produced all records that you identified with reasonable particularity. The DOE received your request on or about February 9, 2012, to which it acknowledged its receipt in writing on February 15, 2012. On March 19, 2012, Mr. Greisl provided to you all records maintained by the DOE that were responsive to your request, which included Barbara Faye Sounders-Sneary's Teacher and Speech Pathologist License; Complaint CP-049-2012 regarding the licensing of Ms. Sounders-Sneary; and information relative to Speech-Language Pathologist Licensure.

As to your complaint regarding the DOE's response to your (2) and (3) request, the DOE maintains that all records responsive to your request were provided. In addition to records maintained by the DEP, you were provided with information regarding speech-language services and directed to the Indiana General Assembly's website to assist you in determining which agencies or individuals were responsible for implementing and enforcing licensing requirements of the DPS. Items in (2) and (3) of your request did not seek documents maintained by the DOE; they listed subjects and content contained in unspecified locations. As written, your request would require the DOE to search through every document, file, and piece of electronic data maintained by the DOE to determine whether or not each record contains the information that he list. The APRA does not require public agencies to search through records, electronically or manually, to determine what records might contain information that is responsive to the request. *See Opinions of the Public Access Counselor 04-FC-38; 08-FC-124, and 10-FC-57.* It is also not the DOE's responsibility to perform legal research in response to a records request. *See Opinion of the Public Access Counselor 11-FC-20.* Mr. Greisl noted that when the DOE produced all records that were responsive to your request, it provided that you could contact Mr. Greisl directly should you have any questions.

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 DOE 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 DOE'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



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public agency could be an acknowledgement that the request has been received and information regarding how or when the agency intends to comply. Here, the DOE responded to your written request in writing within seven (7) days of its receipt. Thus, it is my opinion that the DOE complied with the requirements of section 9 of the APRA in responding to your request.

The APRA requires that a request for inspection or copying must identify with reasonable particularity the record being requested. *See* I.C. § 5-14-3-3(a). While the term “reasonable particularity” is not defined in the APRA, it has been addressed a number of times by the public access counselor. *See Opinions of the Public Access Counselor 99-FC-21; 00-FC-15; 09-FC-24; 11-FC-12*. Counselor Hurst addressed this issue in *Opinion of the Public Access Counselor 04-FC-38*:

A request for public records must “identify with reasonable particularity the record being requested.” IC 5-14-3-3(a)(1). While a request for information may in many circumstances meet this requirement, when the public agency does not organize or maintain its records in a manner that permits it to readily identify records that are responsive to the request, it is under no obligation to search all of its records for any reference to the information being requested. Moreover, unless otherwise required by law, a public agency is under no obligation to maintain its records in any particular manner, and it is under no obligation to *create* a record that complies with the requesting party’s request. *Opinion of the Public Access Counselor 04-FC-38*.

If a public agency does not maintain any records responsive to a public records request, the agency does not violate the APRA by denying the request. *See Opinions of the Public Access Counselor 01-FC-61 and 08-FC-113*. A public agency is not required to conduct research or create a new record in order to satisfy a public records request. *See Opinions of the Public Access Counselor 03-FC-146; 05-FC-25; 10-FC-56*. However, because the public policy of the APRA favors disclosure and the burden of proof for nondisclosure is placed on the public agency, if an agency needs clarification of a request, the agency should contact the requester for more information rather than simply denying the request. *See generally* IC 5-14-3-1; *Opinions of the Public Access Counselor 02-FC-13; 05-FC-87; 11-FC-88*.

The DOE has advised that as to your requests (2) and (3), it provided all records maintained by the agency that were responsive to your requests. In addition, the DOE provided to you information regarding speech-language services and directed you to the

Indiana General Assembly's website to aid in your effort to determine what agencies or individuals were responsible for implementing and enforcing the licensing requirements. Further, the DOE advised that if you had any further questions, that you could contact Mr. Griesl directly. It is my opinion that to the extent that your request sought information and/or legal advice, as opposed to records maintained by the agency, the APRA does not require the DOE to manually or electronically search through its records or provide legal advice. *See Opinions of the Public Access Counselor 03-FC-146 and 10-FC-57.* As opposed to simply denying your request, the DOE attempted to provide you with information to assist you or advised that you may contact the Mr. Greisl directly if needed. As such, it is my opinion that the DOE did not violate the APRA in responding to your request. To the extent you wish to submit an amended reasonably particular request for records to the DOE, it would be required to continue to respond to such a request pursuant to the requirements of the APRA.

CONCLUSION

For the foregoing reasons, it is my opinion that the DOE did not violate 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 long, sweeping underline.

Joseph B. Hoage
Public Access Counselor

cc: Christopher Greisl