

June 1, 2001

Mr. Richard E. Volbrecht, Jr.
9221 Parkway Drive
Highland, IN 46322

*Re: Advisory Opinion 01-FC-30; Alleged Denial of Access to Public Records by the
Prairie Heights Community School Corporation.*

Dear Mr. Volbrecht:

This is in response to your formal complaint, which was received on May 18, 2001. You have alleged that the Prairie Heights Community School Corporation ("Corporation") violated the Indiana Access to Public Records Act ("APRA,") Indiana Code chapter 5-14-3. Specifically, on May 9, 2001, you faxed a request for photocopies of documents concerning the Academic Honors Diploma ("AHD") monies given in the year 2000 and the amounts that will be given in the years 2001 and 2002. You did not receive any response from the Corporation. Dr. Marilyn Quick, Superintendent of the Corporation, responded in writing to your complaint and a copy of her response is enclosed for your reference.

For the reasons set forth below, it is my opinion that the Corporation did respond to your request for access to public records within the seven (7) day period required under Indiana Code section 5-14-3-9(b) and that there was no violation of the APRA.

BACKGROUND

According to your complaint, in a facsimile sent on May 9, 2001, you requested photocopies of three different documents:

1. The document showing the AHD Award Money given to 1999 graduates in the year 2000.
2. The document showing the AHD Award Money that will be given to 2000 graduates in the year 2001.
3. The document showing the AHD Award Money that will be given to 2001 graduates in the year 2002.

You also suggested in your request that the Corporation could provide this information in a new document in a question and answer format in place of the "exact" documents requested. As of the date you signed your complaint, May 17, 2001, you had not received any response from the Corporation.

In response to your complaint, Dr. Quick stated that she processes her in-box on a daily basis, but that she was not aware of your facsimile request of May 9th. Dr. Quick did receive another facsimile request from you dated May 18, 2001 and responded to your request on May 21, 2001. Dr. Quick not only

responded to your request, but provided all of information you requested at the same time.¹

ANALYSIS

The public policy of the APRA states that "(p)roviding persons with information is an essential function of a representative government and integral part of the routine duties of public officials and employees, whose duty it is to provide the information." Ind. Code § 5-14-3-1. Furthermore, "[t]his chapter shall be liberally construed to implement this policy and place the burden of proof for the nondisclosure of a public record on the public agency that would deny access to the record and not on the person seeking to inspect and copy the record." Ind. Code § 5-14-3-1.

The Corporation is clearly a public agency for the purposes of the APRA. Ind. Code § 5-14-3-2. Accordingly, any person has the right to inspect and copy the public records of the Corporation during regular business hours unless the public records are excepted from disclosure as confidential or otherwise nondisclosable under Indiana Code section 5-14-3-4. Ind. Code § 5-14-3-3(a).

It is the responsibility of the public agency to respond to requests for access to public records within a specified time period. The APRA does not set any time periods for producing public records, merely for responding to the request. If a request is delivered via facsimile, a denial is deemed to have occurred if seven (7) days elapse after the agency receives the request and there has been no response. Ind. Code § 5-14-3-9(b). Once a denial has occurred under the APRA, a person may file suit in the circuit or superior court in which the denial took place to compel the public agency to disclose the public records requested. Ind. Code § 5-14-3-9(d).

According to your complaint, you faxed your request on May 9, 2001 and based upon my knowledge of prior requests you have made, I believe that to be true. The Corporation, however, claims not to have received your original request and that it was possibly misdirected or the facsimile machine malfunctioned. It is reasonable that there may have been a problem with the transmission or delivery that would not be evident to you as the sender. One thing that is clear is that you did receive a timely response to your May 18th facsimile request, well within seven (7) days after your request was received by the Corporation. You also received all of the information you requested. Given these facts, it is my opinion that the Corporation clearly did respond within the time frame required under Indiana Code section 5-14-3-9(b) and that there was no violation of the APRA.

CONCLUSION

It is my opinion that the Prairie Heights Community School Corporation did respond to your May 18th request for access to public records within the seven (7) day period required under Indiana Code section 5-14-3-9(b).

Sincerely, Anne Mullin O'Connor

Enclosure cc: Dr. Marilyn Quick, Superintendent
Prairie Heights Community School Corporation

¹You contacted me after you received Dr. Quick's response to state that you did receive confirmation of the delivery of your facsimile to the Corporation on May 9th, but that you also believe Dr. Quick in her response that she had not received your May 9th request. I agree with your position that it will prove nothing to get into a "finger-pointing" contest over this issue.

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