

October 17, 2001

Ms. Donna Thacker
323 Diehl Drive
Lawrenceburg, IN 47025

Re: *Advisory Opinion 01-FC-61*;

Alleged Denial of Access to Public Records by the Lawrenceburg Community School Corporation.

Dear Ms. Thacker:

This is in response to your formal complaint, which was received on September 24, 2001. You have alleged that the Lawrenceburg Community School Corporation ("School Corporation") has violated the Indiana Access to Public Records Act ("APRA,") Indiana Code chapter 5-14-3. Specifically, you allege that the School Corporation denied you access to public records in response to your September 11, 2001 request for inspection. Mr. Ronald Rychener, Attorney for the School Corporation, responded in writing to your complaint. A copy of his response and the attachments are enclosed for your reference. For the reasons set forth below, it is my opinion that the School Corporation did not deny you access to public records under the APRA since there is no obligation to produce public records that do not exist nor to provide duplicate copies of public records to a requestor.

BACKGROUND

According to your complaint, on September 11, 2001, you sent a public records request to the School Corporation to inspect all documents related to the mold issue at the high school. In particular, you requested access to any bills, receipts or purchase orders from all companies or persons involved in the discovery or removal of the mold. It appears that you did receive a response from the School Corporation but claim that you were denied access to a number of the items requested. Specifically, you refer to the invoice for Central Insulation's mold abatement services, the bill for extensive professional cleaning of the HVAC systems and the letter from the Dearborn County Health Department certifying that rooms 208, 302, 303, 304, 305 and 306 were cleaned and completed. You then filed your formal complaint with this Office alleging that the School Corporation denied you access to the public records you requested to inspect under the APRA.

In his response, Mr. Rychener responded that the School Corporation has no invoice for mold abatement from Central Insulation, since Central Insulation was a subcontractor for another contractor, Sunderman. Mr. Rychener did provide a copy of a quote from Central Insulation that the School Corporation does have. As far as an invoice for professional cleaning, Mr. Rychener responded that Sunderman performed this work and that a copy of the invoice dated August 6, 2001 has already been

provided to you. With respect to the Board of Health letter certifying certain rooms clean and completed, Mr. Rychener stated that the School Corporation did not have that letter at the time of your initial request, but did receive it on or about September 20th or 21st. When the School Corporation received this, they did immediately forward a copy to you. For these reasons, Mr. Rychener states that the School Corporation has provided you with access to the public records you requested.

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." Ind. Code § 5-14-3-1. The School 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 School 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 my opinion that the 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.

In your complaint, you claim that the School Corporation failed to provide various public records related to the mold abatement at the high school building. According to the information provided with your complaint, the School Corporation did in fact respond to your request and did provide copies of certain documents to you.

With respect to the invoice for Central Insulation's mold abatement, it appears that the School Corporation does not have this record. As noted above, the failure to produce a public record that does not exist is not a denial under the APRA. Since Central Insulation worked as a subcontractor on the project, it would not be out of the ordinary for the public agency not to receive an invoice that will be paid directly by the contractor.

The School Corporation claims that on a previous occasion, you were provided with a copy of the work performed by Sunderman for professional cleaning. Under the APRA, a public agency is required to provide at least one (1) copy of a public record to a requestor. Ind. Code §5-14-3-8(e)(2). Consequently, the failure to produce it again under this public records request was not a denial under the APRA.

Finally, the School Corporation did not produce a copy of a letter from the Board of Health certifying certain rooms as having been cleaned and completed for mold abatement. You made your request on September 11th, and at that time, the School Corporation had not received that letter. The letter from the Board of Health was dated September 19th, and received by the School Corporation on September 20th or 21st. A copy was mailed to you on the day it was received, which was before they received the formal complaint filed in this Office on September 24, 2001. Again, the failure to produce a nonexistent public record is not a denial under the APRA, but the School Corporation did provide you with a copy of this letter as soon as it became available, which is commendable.

For the reasons cited above, it is my opinion that the School Corporation did not violate the APRA by denying you access to public records in response to your September 11, 2001 request. I would suggest, however, that in response to future requests the School Corporation advise requestors when no public records exist that satisfy their requests or if a public record was previously provided to them. In this way, the requestor will better understand why no public records have been produced in response to his or her request.

CONCLUSION

It is my opinion that the Lawrenceburg Community School Corporation did not deny you access to public records in violation of the APRA with respect to your September 11, 2001 public records request. It is not a denial of access under the APRA not to produce public records that do not exist nor to fail to produce additional copies of public records that have previously been produced.

Sincerely,

Anne Mullin O'Connor

Enclosure

cc: Mr. Ronald K. Rychener, Attorney Lawrenceburg Community School Corporation
