

October 19, 2001

Ms. Brenda C. Roberts
122 High View Drive
Lawrenceburg, IN 47025

Re: *Advisory Opinion 01-FC-64*;

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

Dear Ms. Roberts:

This is in response to your formal complaint, which was received on October 1, 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 August 31st 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 denied you the right to inspect many of the public records as you requested and that this violated the APRA. With respect to specific items you claim you were denied access to, however, the School Corporation was not obligated under the APRA to produce public records that do not exist or to answer questions.

BACKGROUND

According to your complaint, on August 31, 2001, you sent a public records request to the School Corporation to "review" the following public records¹, "including the purchase orders and signed receipts"

5. Provide the complete billing information for the Verizon cell phones totaling \$3,037.99, names of each person authorized to use the cell phones (including phone numbers and phone bills) from the first day of usage.

* * *

7. The purchase receipt for \$130,347 from general fund.

* * *

10. The reason Todd Rudnick was paid approximately \$3,000 (over and above his budgeted salary) out of the general fund.

Your request further stated that you understood there may be a copying fee and you stated two times that you wanted to be notified of any copying costs before the School Corporation copied the public records for you. In your formal complaint, you highlighted certain of the items, specifically under requests numbered 5, 7 and 10 that you believe the School Corporation wrongfully denied access to under the APRA. Also, you state that you asked to review the public records, but you were not permitted to see of the public records in question, rather you were given an unsigned, handwritten two-page response with information from someone at the School Corporation.

In his response, Mr. Rychener stated that the School Corporation has properly responded to your August 31st request to inspect the documents that are in the possession of the School Corporation and that are discernable from your requests. Specifically, the School Corporation was not able to determine what your request number 5 was asking for. He indicated that you were contacted by telephone about this issue and were advised that the \$3,037.99 amount was a twelve-month total for the year 2000 and that you indicated that you wanted to be contacted prior to any copies being made for you. As of the date of his response, he stated that the School Corporation was not clear as to what documents you want to inspect. Further, in response to request number 5, Mr. Rychener stated that you have previously been provided with the information about what persons are authorized to use cell phones, so it was not provided again.

As to your request number 7, Mr. Rychener stated that the School Corporation does not have a receipt for \$130,347. It appears that you obtained this amount from a published budget report and the School Corporation is apparently required to publish this report listing any payments made to vendors in excess of \$2,500. While there is no receipt, the School Corporation does have claims for the amounts that total \$130,347 and if you wish to inspect those claims, the School Corporation will make them available.

As to your request number 10, Mr. Rychener points out that this item does not request the review of any document. In a letter dated September 14, 2001, Mr. Rychener had personally answered this question for you explaining that Mr. Rudnick is reimbursed for mileage and expenses paid from his own pocket, as authorized by School Board policy.

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). The burden for any nondisclosure generally lies with the public agency, not the person making the request under the APRA. Ind. Code § 5-14-3-1.

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. Further, the APRA requires public agencies to provide opportunities to inspect and copy public records; a public agency is not required under the APRA to answer questions.

In your complaint, you claim that the School Corporation failed to provide various public records related to your August 31st request. According to the information provided with your complaint, the School Corporation did in fact respond to your request and did provide information to you, but you contend that not all of the information was provided. Further, you had asked to inspect these public records and were not given that opportunity.

Under the APRA, the School Corporation was required to respond to your request and ultimately produce any public records that were available to you for inspection and/or copying. Ind. Code §§5-14-3-3 and 5-14-3-9. "Inspection" for the purposes of the APRA includes, for the purposes of public records available in paper format, the "right to manually transcribe and make notes, abstracts, or memoranda" from those public records. Ind. Code §5-14-3-2. You did ask to "review" the public records you requested on August 31st, but claim that you were not provided that opportunity. There is nothing in Mr. Rychener's response that indicates differently other than with respect to your request number 5, for which the School Corporation did indicate a willingness to make cell phone bills available for inspection. It is my opinion that you were entitled to inspect any public records that were responsive to your August 31st request and the School Corporation's failure to provide this opportunity was a denial of your right to inspect public records under the APRA.

After reviewing your request, it appears that while you did ask to review or inspect the public records, you also asked for copies. In fact, you stated that the School Corporation should contact you prior to making any copies. With respect to at least one of the items at issue, your request number 5, it appears that the School Corporation did contact you. There may have been some confusion on the School Corporation's part about your request to review as well as obtain copies, but providing merely a handwritten, unsigned list of information was not satisfactory with respect to your rights to either inspect or copy the public records of the School Corporation.

I will now address the specific requests you made for which you believe you were denied access to public records. Under your request number 5, it appears that the School Corporation was unclear about your request and contacted you directly. Mr. Rychener stated that you had not made it clear which Verizon cell phone bills you did want to inspect. The School Corporation appears to have responded as is required under the APRA and it is my opinion that this was not a denial under the APRA. I suggest that you contact the School Corporation to make arrangements to inspect these public records.

As to your request number 7, you claim that you were not provided a receipt for a certain amount from the general fund. In the School Corporation's handwritten response, it was stated that this amount was actually reflective of two payments to the general fund from other funds. Mr. Rychener stated that there was no "receipt", therefore the School Corporation could not produce it. As noted above, the failure of a public agency to provide nonexistent public records is not a denial under the APRA,

therefore, it is my opinion that the School Corporation did not violate the APRA with respect to this request. Mr. Rychener also stated in his response that the School Corporation is willing to provide you with access to individual claims related to these amounts, and I suggest that if you wish to do so, you contact the School Corporation for this purpose.

Finally, you state you were denied access with respect to your request number 10. It is my opinion that you presented a question and not a request for a public record, and the School Corporation was not obligated to respond to this question under the APRA. Consequently, the failure to answer this question was not a denial under the APRA. It is important to note, however, that Mr. Rychener did provide you with a written response to your question in a letter dated September 14, 2001, so you have since the August 31st request received the answer to this question.

I would suggest, however, that in response to future requests the School Corporation specifically advise requestors when no public records exist that satisfy their requests. 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 denied you the right to inspect many of the public records as you requested and that this violated the APRA. With respect to specific items you claim you were denied access to, however, the School Corporation was not obligated under the APRA to produce public records that do not exist or to answer questions.

Sincerely,

Anne Mullin O'Connor

Enclosure

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

¹ You made a total of 10 separate requests, but had concerns about being denied access only to 3 specific items. While I have not listed the other 7 requests, the body of the Opinion does also address the School Corporation's response to your entire request. It was not important, however, to restate all 10 of your requests.