



STATE OF INDIANA

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December 17, 2008

Nancy Anglis
1320 Surrey School
Crown Point, Indiana 46307

Re: Formal Complaint 08-FC-239; Alleged Violation of the Access to Public Records Act by Crown Point High School

Dear Ms. Anglis:

This advisory opinion is in response to your formal complaints alleging Crown Point High School ("School") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by denying you access to records. A copy of the School's response to the complaints is enclosed. In my opinion the School did not violate the APRA.

BACKGROUND

You filed the present complaint on November 17, 2008. You allege the School has denied you access to a copy of the School's budget. Furthermore, you allege that you have requested a comparison of grades for last year and this year. You allege the School has denied you access to this information.

The School responded to the complaint by letter dated December 3 from attorneys Cheryl Zic and Ian Lucas. The School contends that the administration has made several offers to meet with you do discuss your concerns but that you have not agreed to meet. Regarding your allegation related to the School's budget, the School contends that you sent an August 21 electronic mail message to the School listing several "budgetary concerns" but did not request a specific record. Because the message did not identify a record, the School did not interpret it as a request under the APRA. The School contends Dr. Eric Ban made a good faith effort to attempt to provide you with answers to your questions. The School contends that even if your August 21 message did contain a request for access to records, the School does not maintain a record which would provide you the requested answers and is not required to create a new record. The School further contends that although you did not mention it in your complaint, you sent an August 27 electronic mail message to Matt Ruess wherein you requested a copy of the school corporation budget. The School contends it responded on August 29, indicating the budget is available at the front desk of the Administrative Service Center.

Regarding your request for grade information, the School contends the first time it learned of the request was by a November 12 electronic mail message you sent to Dr. Ban, wherein you inquired why there was no follow-up from your request for a grade comparison. Dr. Ban contends he has no recollection of a request made prior to November 12. The School contends the document from 2007 which you saw as part of a committee was created specifically for that meeting and was not a record regularly, or required to be, created or maintained by the School. The School contends it is not required to create a record to satisfy your request. The School further contends the only duty imposed on the School is to provide documents that were made, maintained, or kept on file by the School. The School contends that regardless of these arguments, Dr. Ban made a good-faith attempt to provide you with the information on November 17. The School contends you filed this complaint before the seven-day response period had expired.

ANALYSIS

The public policy of the APRA states, "(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." I.C. § 5-14-3-1. The School is clearly a public agency for the purposes of the APRA. I.C. § 5-14-3-2(m). Accordingly, any person has the right to inspect and copy the public records of the School during regular business hours unless the public records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. I.C. § 5-14-3-3(a).

A request for records may be oral or written. I.C. §§ 5-14-3-3(a), 5-14-3-9(c). 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. I.C. § 5-14-3-9(b).

The School first contends that your August 21 communication did not contain a request for access to records. After reviewing the August 21 message, it is my opinion the message did not contain a request for access to records. You asked several questions related to "budgetary concerns," but at no point did you ask for access to or copies of records. Nothing in the APRA requires an agency to respond to inquiries or meet with any person requesting information. Further, nothing in the APRA requires a public agency to *develop* records or information pursuant to a request. The APRA requires the public agency to *provide access* to records already created. If no record exists responsive to the request, the agency has nothing to provide you.

The August 27 message you sent to the School did contain a request for a copy of the School's budget. In a message dated August 29, Mr. Ruess indicated when and where you could obtain a copy of the record. This was a timely response under the APRA. *See* I.C. § 5-14-3-9(b). If you wish to obtain a copy of the record rather than access to inspect the record, the School is obligated to provide you a copy of the record:

If:

- (1) a person is entitled to a copy of a public record under this chapter; and
 - (2) the public agency which is in possession of the record has reasonable access to a machine capable of reproducing the record; the agency must provide *at least one copy* of the public record to the person . . .
- I.C. § 5-14-3-8(e), *emphasis added*.

If you wish to receive a copy of the record, you should indicate such to the School. The School may charge you appropriate copy costs pursuant to I.C. § 5-14-3-8 and may require those costs to be paid in advance.

Regarding the grade comparison, the School contends that the 2007 record you saw as part of a committee was created specifically for that meeting. The School contends it was not a record regularly or required to be created or maintained by the School. This interpretation of the School's obligations under the APRA is not in line with the definition of "public record" under the APRA. A "public record" means any writing, paper, report, study, map, photograph, book, card, tape recording or other material that is created, received, retained, maintained or filed by or with a public agency. I.C. § 5-14-3-2(m). The APRA does not limit the definition to records regularly created or required to be created by the agency. Instead, it includes any record that has been created, received, retained, maintained or filed by or with the agency; this is much more inclusive than only those records required to be created. If a record has been created by an agency, it is a public record under the APRA. Further, any public record subject to Ind. Code 5-15 must be maintained according to an approved retention schedule. See I.C. § 5-14-3-4(e). If a record was created, it is subject to disclosure under the APRA unless an exception to disclosure applies.

To the extent the specific record you seek containing more current data does not exist, the agency is not required to create a new record to satisfy your request. As I previously indicated, nothing in the APRA requires a public agency to *develop* records or information pursuant to a request.

Finally, the School contends your complaint was submitted too early under the APRA. The APRA allows an agency seven days to respond to a request delivered by mail, facsimile, or electronic mail. *See* I.C. § 5-14-3-9(b). A response could be an acknowledgement that the request has been received and information regarding how or when the agency intends to comply. There are no prescribed timeframes when the records must be produced by a public agency. You submitted your complaint five days after you submitted the request to Dr. Ban. Please note for future reference that you should wait at least seven days after the request before filing a complaint, since the APRA allows the agency seven days to respond.

CONCLUSION

For the foregoing reasons, it is my opinion the School has not violated the APRA.

Best regards,



Heather Willis Neal
Public Access Counselor

Cc: Cheryl Zic and Ian Lucas, Singleton, Crist, Austgen & Sears, LLP
Dr. Eric Ban, Crown Point High School