



STATE OF INDIANA

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October 14, 2011

Mr. Charles R. Rubright
Bose McKinney & Evans LLP
111 Monument Circle, Suite 2700
Indianapolis, Indiana 46204
Via email: CRubright@boselaw.com

Re: *Informal Inquiry 11-INF-58; Franklin Township Community School Corporation*

Dear Mr. Rubright:

This is in response to your informal inquiry regarding the Franklin Township Community School Corporation ("School"). Pursuant to Ind. Code § 5-14-4-10(5), I issue the following informal opinion in response to your inquiry. My opinion is based on applicable provisions of the Access to Public Records Act ("APRA"), I.C. § 5-14-3-1 *et seq.*

On September 7, 2011, Judith A. McEvoy filed a formal complaint with the Public Access Counselor Office's against the School. On October 6, 2011, the Public Access Counselor issued Advisory Opinion 11-FC-230, which found that the School violated the ODL by failing to provide a justification for withholding the records that were requested. Due to a miscommunication, the School did not provide a response to Ms. McEvoy's formal complaint. You have now submitted a response on behalf of the School to the formal complaint, and have requested an informal opinion as to whether the School would have violated the APRA if such a response had been filed.

BACKGROUND

In Ms. McEvoy's formal complaint, she alleged that she submitted an e-mail request to Chad Blacklock, the School's Business/Finance Director, on August 30, 2011 requesting a current list of all administrators, both certified and uncertified, showing base salaries, benefits, and total salaries. She further requested the same information for all teachers and employees of the School. As of September 7, 2011, the date she filed her formal complaint with the Public Access Counselor's Office, she had yet to receive any records in response to her request.

You have provided correspondence that Ms. McEvoy's original request was

submitted to the School via an e-mail addressed to Chad Blacklock on August 26, 2011. She requested the following:

“Could you please e-mail me the current list of all administrators that gives their base pay and listing all their benefits with total cost for all of them. (Certified and uncertified).

Could you also tell me total number of teachers we currently have (certified and uncertified), what their total salaries are and what their total benefits amount to that are paid by the School.

Are there other employees not included above? If so, please describe the type of position, total employees and total salaries and benefits.”

On August 30, 2011, Ms. McEvoy e-mailed the School, via an e-mail addressed to Mr. Blacklock and provided the following:

“Don’t know if you received this previous e-mail. Could you please send me the info? Thanks, Judy.”

On August 31, 2011, Mr. Blacklock responded to Ms. McEvoy and advised that he did receive her request and would respond when he was able. Thereafter, on September 9, 2011, Mr. Blacklock responded to Ms. McEvoy’s request via e-mail and provided all records and information responsive to her request.

The School has advised that the request did not identify with reasonable particularity the records that it sought, as required by I.C. § 5-14-32-3(a)(1). The request constituted a question, not a request for records, as have many of Ms. McEvoy’s prior requests of the School. Though not obligated under the APRA to respond to Ms. McEvoy’s inquiries, it has diligently made an effort to respond to every inquiry which can be illustrated by Mr. Blacklock’s September 9, 2011 response.

As to the time required to the School to respond to Ms. McEvoy’s requests, the APRA requires a response within seven (7) days to a written request. The School responded within the timeframe established by the APRA and provided all records and information in response to her request within eight (8) business days.

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 School 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 School'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 24 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 (7) 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 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 School responded to Ms. McEvoy's request within the timeframes provided by the APRA.

Under the ARRA, 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, 10-FC-120.* 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 create a record that complies with the requesting party's request.

After reviewing the request, it is my opinion that it primarily seeks general information rather than records. The School is not obligated to create records in response to a request, and it is also not obligated to answer generalized inquiries. *See Opinion of the Public Access Counselor 11-FC-07.* If a public agency has no records responsive to a public records request, the agency does not violate the APRA by denying the request. *See Opinion of the Public Access Counselor 10-FC-56.* 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. *See Opinions of the Public Access Counselor 09-FC-35 and 09-FC-210.*

As noted in Advisory Opinion 11-FC-230, in regards to the request for the salaries of a list of employees, again the School need not create a list to satisfy that request. However, to the extent that the request provided for records regarding specific employees, the School should provide you access to those records in accordance with subsection 4(b)(8) of the APRA, which provides that personnel files of public employees and files of applicants for public employment may be excepted from the APRA's disclosure requirements, except for:

- (A) The name, compensation, job title, business address, business telephone number, job description, education and training background, previous work experience, or dates of first and last employment of present or former officers or employees of the agency;
 - (B) Information relating to the status of any formal charges against the employee; and
 - (C) The factual basis for a disciplinary action in which final action has been taken and that resulted in the employee being suspended, demoted, or discharged.
- I.C. § 5-14-3-4(b)(8).

Accordingly, the School was not required pursuant to the APRA to respond to Ms. McEvoy's requests seeking general information or those that failed to identify with reasonable particularity the records being sought. However, in light of the School going beyond the requirements of the APRA and providing the information and/or records to Ms. McEvoy, it is my opinion that it did not violate the APRA.

The APRA does not prescribe timeframes for the actual production of records. The public access counselor has stated repeatedly that records must be produced within a reasonable period of time, based on the facts and circumstances of the request. Considering factors such as the nature of the requests (whether they are broad or narrow), how old the records are, and whether the records must be reviewed and edited to delete nondisclosable material is necessary to determine whether the agency has produced records within a reasonable timeframe. The APRA *requires* public agencies to separate and/or redact confidential information in public records before making the disclosable information available for inspection and copying. *See* I.C. § 5-14-3-6(a). (emphasis added). Section 7 of the APRA requires a public agency to regulate any material interference with the regular discharge of the functions or duties of the public agency or public employees. *See* I.C. § 5-14-3-7(a). However, Section 7 does not operate to deny to any person the rights secured by Section 3 of the APRA. *See* I.C. § 5-14-3-7(c). The ultimate burden lies with the public agency to show the time period for producing documents is reasonable. *See Opinion of the Public Access Counselor 02-FC-45*.

Here, the School provided all documents responsive to the request within eight (8) business days of receiving the request. The School has provided that not only did it produce documents responsive to the request, it also compiled information that it was not obligated to do so under the APRA. At the same time in responding to the request, Mr.

Blacklock was required to devote significant time to producing a report for the School to submit to the Indiana Department of Education and maintain the regular duties required of his position. After retrieving the documents and compiling the information that was requested, the School was required to review the documents pursuant to the APRA. As such, I do not believe the School took an unreasonable amount of time to collect, review, and reproduce the records in response to the request.

Therefore, had the School provided the enclosed response to Ms. McEvoy's formal complaint, it is my opinion that it would not have violated the APRA. If I can be of additional assistance, please do not hesitate to contact me.

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 stylized "H".

Joseph B. Hoage
Public Access Counselor

cc: Judith A. McEvoy