

November 30, 2007

Billie Whitted
3340 Hillcrest Drive
Columbus, Indiana 47203

Re: Formal Complaint 07-FC-335; Alleged Violation of the Access to Public Records Act by the Bartholomew Consolidated School Corporation

Dear Ms. Whitted:

This advisory opinion is in response to your formal complaint alleging the Bartholomew Consolidated School Corporation (“Corporation”), violated the Access to Public Records Act (“APRA”) (Ind. Code 5-14-3) by denying you electronic access to records, specifically to the 2008 budget of the Corporation. I have enclosed a copy of the Corporation’s response to your complaint for your reference. It is my opinion the Corporation must provide the 2008 budget to you on a compact disc if the Corporation maintains the record in an electronic format compatible with the format in which you request it.

BACKGROUND

You allege that you submitted a request to the Corporation on September 25, 2007 for an electronic copy of the 2008 Corporation budget. After receiving the correct form, you submitted your request again on October 1. You received a letter from Superintendent John Quick dated October 5 indicating the Corporation has adopted a policy against providing enhanced access to its records. Mr. Quick further indicated the Corporation does not maintain a copy of the budget on compact disc but a paper copy is available for inspection at the office. You submitted this complaint on November 1.

The Corporation responded to your complaint by letter dated November 15. The Corporation contends that the APRA does not require the Corporation to provide enhanced access to its records. The Corporation contends that the budget does not exist in machine-readable format. The Corporation contends that to produce the budget on CD as requested would require re-creating numerous reports and “directing output to a program that could produce an electronic copy of the document.” The Corporation further contends the reasonable cost to create the CD would be hundreds of dollars. The Corporation again indicates that a paper copy of the budget is available for inspection.

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." Ind. Code §5-14-3-1. The Corporation is clearly a public agency for the purposes of the APRA. I.C. §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 the APRA. I.C. §5-14-3-3(a).

“Public record” means any writing, paper, report, study, map, photograph, book, card, tape recording, or other material that is created, received, maintained, or filed by or with a public agency and which is generated on paper, paper substitutes, photographic media, chemically based media, magnetic or machine readable media, electronically stored data, or any other material, regardless of form or characteristics. I.C. §5-14-3-2(m).

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 public agency must provide at least one copy of the public record to the person. I.C. §5-14-3-8(e). The public agency may charge a fee, uniform to all purchasers, that does not exceed the agency’s direct cost of supplying the information in that form. I.C. §5-14-3-8(g).

A public agency that maintains or contracts for the maintenance of public records in an electronic data storage system shall make reasonable efforts to provide to a person making a request a copy of all disclosable data contained in the records on paper, disk, tape, drum or any other method of electronic retrieval if the medium requested is compatible with the agency’s data storage system. I.C. §5-14-3-3(d). A state agency may adopt a rule or a political subdivision may enact an ordinance prescribing the conditions under which an entity who receives information on disk or tape may or may not use the information for commercial purposes. I.C. §5-14-3-3(e).

Here the Corporation indicates that the budget is not stored on a CD. The question, though, is how and where the information is stored. I assume that the paper copy the Corporation has indicated it has available for inspection and copying is not the only copy of the budget the Corporation maintains. If the data is maintained in an electronic storage system, the Corporation shall make reasonable efforts to provide a copy on a CD if that is compatible with the Corporation’s storage system. I.C. §5-14-3-3(d).

The Corporation has indicated it would need to re-create a number of reports to generate a copy of the budget on CD. If those reports were created as part of the budgeting process, I would assume those reports would be required to be retained by the Corporation’s records retention schedule. The Corporation indicates that creating the CD would require, in addition to re-creating numerous reports, “directing output to a program that could produce an electronic

copy of the document.” I am unclear exactly what is meant by this last statement, but it seems to me that once the reports are generated, they could be written to a CD by a CD burner.

If the information is currently stored in an electronic storage system, and if the Corporation has reasonable access to a computer capable of copying a CD and the medium in which the record was requested is compatible with the Corporation’s electronic storage system, it is my opinion the APRA would require the Corporation to produce the requested records via CD. I.C. §5-14-3-3(d); I.C. §5-14-3-8(e). If, however, the records are only stored in paper format, the Corporation is not required to create the records in an electronic format. 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

CONCLUSION

For the foregoing reasons, it is my opinion the Corporation must provide the 2008 budget to you on a compact disc if the Corporation maintains the record in an electronic format compatible with the format in which you request it.

Best regards,



Heather Willis Neal
Public Access Counselor

cc: Dr. John Quick, Superintendent, Bartholomew Consolidated School Corporation