



STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

PUBLIC ACCESS COUNSELOR

JOSEPH B. HOAGE

Indiana Government Center South
402 West Washington Street, Room W470
Indianapolis, Indiana 46204-2745
Telephone: (317)233-9435
Fax: (317)233-3091
1-800-228-6013
www.IN.gov/pac

January 3, 2011

Joe Cooper
1321 North Meridian
Suite 610
Indianapolis, Indiana 46204

Re: Formal Complaint 11-FC-296; Alleged Violation of the Access to Public Records Act by the Indianapolis Public Schools

Dear Mr. Cooper:

This advisory opinion is in response to your formal complaint alleging the Indianapolis Public Schools ("School") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* A copy of your formal complaint was forwarded to the School, but we have not received a response.

BACKGROUND

In your formal complaint, you allege that you submitted a request via e-mail to the School for the factual basis for the suspension of a School employee. On November 8, 2011, the School responded to your request, acknowledged its receipt, and provided it had been forward to the School's Superintendent of Human Resources. As of December 2, 2011, the date you filed your formal complaint with the Public Access Counselor's Office, you have yet to receive any further correspondence or records from the School in response to your request.

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 your request pursuant to the requirements of section 9 of the APRA.

The School is required to provide certain information pursuant to I.C. § 5-14-3-4(b)(8), 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).

You requested the factual basis for the suspension of a School employee, which pursuant to subsection (C) it was required to provide. Without the benefit of a response from the School, it is unclear to me why your request was denied. Under the APRA, a public agency that withholds a public record bears the burden of proof to show that the record is exempt. *See* I.C. §§ 5-14-3-1, 5-14-3-9(f) and (g). Exceptions to disclosure are narrowly construed. *See* I.C. § 5-14-3-1. Because the School has not provided a justification for withholding the records at issue here, it is my opinion that the School has failed to sustain its burden.

If the School cannot justify withholding the records under the APRA, I encourage the School to release the records to you as soon as possible. To the extent the School persists in its denial of access following the issuance of an advisory opinion from this office and you believe the School to be in violation of the APRA, I leave you to your remedies before a court pursuant to Ind. Code § 5-14-3-9(e).

CONCLUSION

For the foregoing reasons, it is my opinion that the School violated the APRA.

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 distinct "Hoage" following.

Joseph B. Hoage
Public Access Counselor