



STATE OF INDIANA

MICHAEL R. PENCE, Governor

PUBLIC ACCESS COUNSELOR
LUKE H. BRITT

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

April 15, 2015

Hannah M. Smith
217 W. 6th St
Lafayette, IN 47901

Re: Formal Complaint 15-FC-83; Alleged Violation of the Access to Public Records Act by the Lafayette School Corporation

Dear Ms. Smith,

This advisory opinion is in response to your formal complaint alleging the Lafayette School Corporation ("School") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et. seq.* The School has responded via council, E. Kent Moore. His response is enclosed for your review. Pursuant to Ind. Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on March 6, 2015.

BACKGROUND

Your complaint dated March 5, 2015 alleges the Lafayette School Corporation violated the Access to Public Records Act by refusing to provide the requested documents.

On February 3, 2015, you submitted a public records request to the School requesting any reports related to sexual offenses committed by students. On February 17, 2015 you were provided some information, but requested additional details.

On March 5, 2015, you were informed the requested records could not be provided due to risk of noncompliance with the Family Educational Rights and Privacy Act (FERPA).

On March 25, 2015, Counsel for the School replied to your complaint. Counsel notes APRA does not require the disclosure of records made confidential by federal law. Counsel contends the records requested fall under 20 USCS § 1232g, which prevents release of material maintained by the school which directly relates to a student. Counsel cites a Sixth Circuit Court of Appeals decision which held “student disciplinary records are education materials,” *U.S. v. Miami University*, 294 F.3d 797 (2002).

The School also contends even if your request for redaction does occur, it would be possible to determine the exact students involved, defeating the purpose of the redaction.

ANALYSIS

The public policy of the APRA states that “a (p)roviding person 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 Ind. Code § 5-14-3-1. The Lafayette School Corporation is a public agency for the purposes of the APRA. See Ind. Code § 5-14-3-2(n)(1). Accordingly, any person has the right to inspect and copy the School’s public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. See Ind. Code § 5-14- 3-3(a).

In regard to the specific case, the School is correct the information is privileged under FERPA. Under 20 U.S.C. § 1232 (g)(b)(6)(A), any records directly related to the student may not be disclosed.

The records which were provided to you were de-identified, however, did not contain the level of specificity you seek. The Infraction column of the spreadsheet provided listed “Code of Conduct violation” or “Inappropriate Contact”. This is aggregate data and does not contain any identifying information about an individual student.

Furthermore, under 20 U.S.C. § 1232g(b)(1)(K)(i), any educational records released shall be protected and cannot allow any student to be personally identified. Pursuant to the *U.S. v. Miami University* case, this includes disciplinary records. The records you seek are educational records maintained by the School and, to my knowledge, are not law enforcement records.

When we spoke about this issue before the filing of your complaint, I indicated aggregate non-identifying data is not covered by FERPA, because it does not compromise the integrity of the identity of a student. If there is any other documentation related to these disciplinary matters which do not identify a student, the School would be obligated to release it. Any detailed description of the offense may indeed give away the identity of the offending student or an alleged victim. Therefore, 20 U.S.C. § 1232g(b)(1)(K)(i) would prevent the release of such information. It appears as if the School has provided those records it maintains which meet standards of disclosure as well as maintaining identity protection.

CONCLUSION

For the foregoing reasons, it is the Opinion of the Indiana Public Access Counselor the Lafayette School Corporation has not violated the Access to Public Records Act.

Regards,

A handwritten signature in black ink, appearing to be 'LHB', written in a cursive style.

Luke H. Britt
Public Access Counselor

Cc: Mr. E. Kent Moore, Esq.