



STATE OF INDIANA

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October 10, 2013

Mr. Brian Vukadinovich
1129 E. 1300 N.
Wheatfield, IN 46392

Re: Formal Complaint 13-FC-267; Alleged Violation of the Access to Public Records Act by the Union Township School Corporation

Dear Mr. Vukadinovich,

This advisory opinion is in response to your formal complaint alleging the Union Township School Corporation, ("School") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et. seq.* Ms. Cheryl A. Zic, Esq., of the Crist, Sears and Zic Law Offices, responded on behalf of the School. Her response is enclosed for your reference. 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 September 10, 2013.

BACKGROUND

Your complaint alleges the Union Township School Corporation violated the Access to Public Records Act by denying your request in violation of Ind. Code § 5-14-3-3(b). You allege that on or about July 25, 2013, you served upon the School a Request for Access to Public Records, requesting all emails between a Mr. Russ Ingram and between anyone in the School system in the timeframe of January 1, 2009 to July 25, 2013.

The School issued a timely response on the same day acknowledging the request. On August 1, 2013 the School denied your records by stating they were not in possession of any records responsive to your request. You asked the School on August 1, 2013 to perform a more diligent search of the communication system, as you were convinced said records did indeed exist. You made a similar request on August 2, 3, and 5, 2013. At all times the School denied the existence of the records. They updated you as to the status of the search on August 12, 2013 and again on August 16 and 19, 2013. Finally, on September 11, 2013, the School advised you again no records were found after a subsequent search. This may or may not have been due to a server issue possibly deleting the records.

You pre-empted the final communication with the filing of your formal complaint on September 10, 2013. You categorize the School's actions as "stonewalling". The School responded to this Office on September 10, 2013 reiterating the records could not be retrieved and outlined the extraordinary steps taken to remedy the possible deletion due to the server issues.

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 Ind. Code § 5-14-3-1. The Union Township 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).

A request for records may be oral or written. See Ind. Code § 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 Ind. Code § 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 Ind. Code § 5-14-3-9(b). A response from the public agency could be an acknowledgement the request has been received and information regarding how or when the agency intends to comply.

Addressing the timeliness issue of the request, initially, I will say the School should be regarded as an exemplary public agency for remaining in constant communication with you regarding the status of your request. It is recognized they were prompted by your emails on several occasions; however, they were under no obligation to go above and beyond what is required by the APRA. The notion the School was "stonewalling" you is a misguided perspective as far as the Public Access Counselor and the APRA is concerned. This is also in light of the fact they effectively denied your original records request within a week after searching. They also extended the search for the records and updated you every step of the way.

It is unfortunate the School experienced server problems deleting the public records. I will restate the public policy of the APRA holds that providing 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 requested. This Office is committed to ensuring the public is afforded the utmost access and transparency as to state and local governments. Consistent with that philosophy, the School has given every indication they were willing to work diligently to retrieve the records.

The School is not in violation of the APRA if the records do not exist. If they did, then a clear violation would occur by denying them (provided they were not of a deliberative

nature). Even if the server outage was beyond the scope of their control, the school should make every effort to back-up the data with a reliable system. This runs contrary to the records retention schedule set by the Indiana Commission on Public Records. The Public Access Counselor does not enforce the schedule, *per se*; however, I strongly encourage the School to be particularly mindful of the importance of maintaining those records via a reliable format.

CONCLUSION

For the foregoing reasons, it is the Opinion of the Office of the Public Access Counselor the Union Township School Corporation did not violate the Access to Public Records Act.

Regards,

A handwritten signature in black ink, appearing to read 'L. H. Britt', with a large, sweeping flourish extending from the bottom left.

Luke H. Britt
Public Access Counselor

cc: Cheryl A. Zic, Esq.