



STATE OF INDIANA

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February 25, 2013

Mr. Willie L. Brown
400 Taft Place
Gary, Indiana 46404

Re: Formal Complaint 13-FC-53; Alleged Violation of the Access to Public Records Act by the Gary Community School Corporation

Dear Mr. Brown:

This advisory opinion is in response to your formal complaint alleging the Gary Community School Corporation ("School") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Willie Cook, Executive Director, responded on behalf of the School to your formal complaint. His response is enclosed for your reference.

BACKGROUND

In your formal complaint, you allege that on February 12, 2013 you received a phone call from Bill Cook on behalf of the School in response to your request for records. Mr. Cook advised that he had received your request and provided that you would need to get that information from Illinois Central Bus Company ("Company"); the School did not maintain any records that were responsive to your request. You allege that Mr. Cook denied your request for a written response.

In response to your formal complaint, Mr. Cook advised that the School does not maintain any records that were responsive to your request. Mr. Cook advised that the Company would have the records that you are seeking, which is further evidenced by a correspondence from the Company that is included with the School's response.

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 twenty-four 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 days of receipt, the request is deemed denied. *See* I.C. § 5-14-3-9(b). 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, you submitted you hand-delivered your written request to the School, but the only contact information contained in the request was your telephone number. As a result, the School was limited in its ability to respond in writing in light of the deficiency of the request that was submitted. There is no dispute that the School responded to your request within twenty-four hours of its receipt. Upon providing the proper contact information to the School, it would be required pursuant to section 9(b) of the APRA to respond in writing to your request. It is my opinion that the School, in responding to your formal complaint, has now made a proper response pursuant to section 9(b).

If a public agency has no records responsive to a public records request, the agency generally does not violate the APRA by denying the request. “[T]he 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.” *Opinion of the Public Access Counselor 01-FC-61*; *see also Opinion of the Public Access Counselor 08-FC-113* (“If the records do not exist, certainly the [agency] could not be required to produce a copy...”). Moreover, the APRA does not require a public agency to create a new record in order to satisfy a public records request. *See Opinion of the Public Access Counselor 10-FC-56*. Here the School advised that it did not maintain any records responsive to your request and that the Company would maintain such records. The Company has also provided in written correspondence that it maintained the records that were sought. The Company’s contact information is contained in the School’s response to your formal complaint. As such, it is my opinion that the School did not violate the APRA by failing to maintain a record that was responsive to your request that it was not otherwise legally obligated to maintain.

CONCLUSION

For the foregoing reasons, it is my opinion that the School did not violate 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 long, sweeping underline.

Joseph B. Hoage
Public Access Counselor

cc: Willie Cook