

May 18, 2001

Mr. Richard E. Volbrecht, Jr.
9221 Parkway Drive
Highland, IN 46322

Re: Advisory Opinion 01-FC-27; Alleged Denial of Access to Public Records by the School City of Hammond.

Dear Mr. Volbrecht:

This is in response to your formal complaint, which was received on May 15, 2001. You have alleged that the School City of Hammond ("School City") violated the Indiana Access to Public Records Act ("APRA,") Indiana Code chapter 5-14-3. Specifically, on May 7, 2001, you faxed a request for photocopies of documents concerning the Academic Honors Diploma ("AHD") monies given in the year 2000 and the amounts that will be given in the years 2001 and 2002. You did not receive any response from the School City. Mr. Jerry Watkins, Director of Secondary Curriculum/Instruction for the School City responded in writing to your complaint and a copy of his response is enclosed for your reference.

For the reasons set forth below, it is my opinion that the School City did not respond to your request for access to public records within the seven (7) day period required under Indiana Code section 5-14-3-9 (b). This failure to respond in a timely manner did constitute a denial that is actionable under the APRA.

BACKGROUND

According to your complaint, in a facsimile sent on May 7, 2001, you requested photocopies of three different documents:

1. The document showing the AHD Award Money given to 1999 graduates in the year 2000.
2. The document showing the AHD Award Money that will be given to 2000 graduates in the year 2001.
3. The document showing the AHD Award Money that will be given to 2001 graduates in the year 2002.

You also suggested in your request that the School City could provide this information in a new document in a question and answer format in place of the "exact" documents requested. As of the date you signed your complaint, May 14, 2001, you had not received any response from the School City.

In response to your complaint, Mr. Watkins provided me with a photocopy of his e-mail message to you of May 15, 2001. In that response, Mr. Watkins stated that he has only recently returned to work on a part-time basis because he was involved in a major accident. The data you have requested is not readily

available, so Mr. Watkins indicated that it will take some time to produce it to you. He advised that your request will be forwarded as his work schedule and health permit.

ANALYSIS

The public policy of the APRA states that "(p)roviding persons with information is an essential function of a representative government and 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. Furthermore, "[t]his chapter shall be liberally construed to implement this policy and place the burden of proof for the nondisclosure of a public record on the public agency that would deny access to the record and not on the person seeking to inspect and copy the record." Ind. Code § 5-14-3-1.

The School City is clearly a public agency for the purposes of the APRA. Ind. Code § 5-14-3-2. Accordingly, any person has the right to inspect and copy the public records of the School City during regular business hours unless the public records are excepted from disclosure as confidential or otherwise nondisclosable under Indiana Code section 5-14-3-4. Ind. Code § 5-14-3-3(a).

It is the responsibility of the public agency to respond to requests for access to public records within a specified time period. The APRA does not set any time periods for producing public records, merely for responding to the request. If a request is delivered via facsimile, a denial is deemed to have occurred if seven (7) days elapse after the agency receives the request and there has been no response. Ind. Code § 5-14-3-9(b). Once a denial has occurred under the APRA, a person may file suit in the circuit or superior court in which the denial took place to compel the public agency to disclose the public records requested. Ind. Code § 5-14-3-9(d).

According to your complaint, you faxed your request on May 7, 2001. The School City should have responded within seven (7) days after the request was received. It appears that you did not receive a timely response, as described in the preceding paragraph, within seven (7) days after your request was received by the Department. It is my opinion, therefore, that the failure of the Department to respond within the time frame contemplated under Indiana Code section 5-14-3-9 constituted a denial that is actionable under Indiana Code section 5-14-3-9(d).

After you received Mr. Watkins' response, you sent me an e-mail to confirm that you were not aware that he had been working on a limited basis. Mr. Watkins' absence due to health problems was the reason that you did not receive a timely response to your request. Public agencies, however, should make arrangements for dealing with public records requests in the event of a person's absence for any reason, whether illness or vacation, so that they can comply with the response time requirements of the APRA.

CONCLUSION

It is my opinion that the School City of Hammond did not respond to your request for access to public

records within the seven (7) day period required under Indiana Code section 5-14-3-9(b). This failure to respond was a denial that is actionable under the APRA.

Sincerely,

Anne Mullin O'Connor

cc: Mr. Jerry Watkins, Director