

September 27, 2001

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

Re: Advisory Opinion 01-FC-54; Alleged Denial of Access to Public Records by the School Town of Highland.

Dear Mr. Volbrecht:

This is in response to your formal complaint, which was received on September 4, 2001. You have alleged that the School Town of Highland ("School Town,") violated the Indiana Access to Public Records Act, ("APRA,") Indiana Code chapter 5-14-3. Specifically, you claim that the School Town's failed to respond to your request for the document indicating how much was spent for the June 1999 Academic Honors Diploma students. Dr. Judith DeMuth, Assistant Superintendent for Personnel and Business, responded in writing to your complaint and a copy of her response is enclosed for your reference.

For the reasons set forth below, it is my opinion that since the School Town did not have a document that contained the information you requested, there was no obligation to either create or supply other information to you in response to your request. The fact that Dr. DeMuth supplied public records to you that she considered responsive to your request in lieu of the document you requested is not a violation of the APRA.

BACKGROUND

According to your complaint, you made a public records request dated July 24, 2001 for "the document that shows how the \$51,200 from our June, 1999 [64] AHD¹ graduates @ \$800 was spent during Jan. 1-Dec. 31, 2000 or afterward." You claim that the School Town provided you with various documents, but that none of these was responsive to your request. For this reason, you filed your formal complaint alleging that the School Town denied you access in violation of the APRA.

In response to your complaint, Dr. DeMuth responded that there is no document that reflects how \$51,200 was spent for the 1999 graduates of the School Town.² After reviewing your request, Dr. DeMuth stated that she interpreted it to mean that you wanted information about the School Town's budget allocations, appropriations and expenditures of the 1999 AHD funds. The School Town budget is apparently the only document that lists amounts concerning the AHD program. She thought this was responsive to your request of July 24th. If the intent of your request was to obtain the amounts appropriated and expended for the AHD program, Dr. DeMuth said that she is willing to provide this

information to you.

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 Town 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 Town 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 my opinion that the 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.

Indiana Code section 5-14-3-3 also provides in relevant part that "a request for inspection and copying must identify with *reasonable particularity* the record being requested." (Emphasis added.) While the phrase "reasonable particularity" appears to be clear, were it necessary to interpret the APRA to determine what the General Assembly intended this phrase to mean, courts would rely upon the common and ordinary meaning. *Crowley v. Crowley*, 588 N.E.2d 576, 578 (Ind. App. 1992). "Particularity" is defined as "the state of being particular rather than general." THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE (1981), 956.

Statutory interpretation rules require that one construe the phrase "reasonable particularity" in light of the entire APRA. *Deaton v. City of Greenwood*, 582 N.E.2d 882, 885 (Ind. App. 1991). Since the APRA favors disclosure and the burden of proof for the nondisclosure is on the public agency, the agency should contact the requestor for more information if it is necessary to respond to a request.

According to Dr. DeMuth's response, she tried to accommodate your request despite the fact that the School Town did not have a document that satisfied your request. Since the School Town did not have a document that satisfied your request, there was no obligation to produce the information that she did in response to your request. For these reasons, it is my opinion that the School Town's response was not inappropriate under the APRA. It is also my advice that, in the future, the School Town should contact the requestor if there is any question about what information or public records are being sought in order to avoid a similar problem in the future. If you would like the document offered by Dr. DeMuth in her September 11th response to your formal complaint, I suggest that you contact her directly for that information.

CONCLUSION

It is my opinion that the School Town of Highland did not violate the Access to Public Records Act with respect to your July 24, 2001 public records request. Since the School Town did not have a public record that was responsive to your request there was no obligation to either create a new document or to produce existing documents that may or may not have been responsive to your request.

Sincerely,

Anne Mullin O'Connor

Enclosure

cc: Dr. Judith A. DeMuth, Ed.D, STH

¹ Academic Honors Diploma.

² According to Dr. DeMuth, the actual amount was \$59,200. (64 graduates @\$925/graduate)

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