

November 16, 2001

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

Re: *Advisory Opinion 01-FC-69*;  
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 October 29, 2001. You have alleged that the School Town of Highland ("School Town") has violated the Indiana Access to Public Records Act ("APRA,") Indiana Code chapter 5-14-3. Specifically, you allege that the School Town denied you access to public records by interfering with your right to inspect public records during regular business hours. Dr. Judith DeMuth, Assistant Superintendent for Personnel and Business for the School Town, responded in writing to your complaint. A copy of her response is enclosed for your reference. For the reasons set forth below, it is my opinion that the School Town did provide you with an opportunity to inspect the public records available at the Administration Center on October 26, 2001 and that you were not denied access under the APRA.

### BACKGROUND

According to your complaint, on October 26, 2001, you appeared at the School Town's Administration Center to view materials related to the AHERA (Asbestos Hazardous Emergency Response Act), such as the plans and reports that are required to be on file in each School Town building. Dr. DeMuth had apparently contacted you by telephone the day before<sup>1</sup> to advise you that you could inspect these plans and reports for each of the School Town buildings at the Administration Center. You apparently asked if the Designated Person<sup>2</sup> under the AHERA would be available as well and were told that he would. When you arrived, the only AHERA material that Dr. DeMuth had for you was the master management plan for the entire School Town, not the individual buildings plans or reports. Further, the Designated Person under AHERA was not made available to you.

You state in your complaint that you felt that Dr. DeMuth was attempting to discourage you from going to each of the School Town's buildings to inspect these documents. Further, you state that you were given no real opportunity to examine the few documents that were provided to you during the October 26th meeting and that Dr. DeMuth attempted to disturb or distract you from your efforts to inspect the public records in question. It is your position that you were denied the opportunity to inspect the documents for each school building as you requested and that this constituted a violation of the

APRA.

In her response, Dr. DeMuth stated that she believes your complaint is unfounded and in support of her position, she provided a timeline of the School Town's actions with respect to the written public records request you submitted for these documents. On October 22nd the School Town received your request, in which you asked for access<sup>3</sup> to the following public records:

Any and all EPA [Environmental Protection Agency] reports which certify that each of the 6 buildings in the School Town of Highland [High School, Middle School, Warren, Southridge, Merkley (&) Johnston] have been inspected for mold and for asbestos. These reports [most recent] must contain the inspection firm's name, address, phone number, fax number which did the reports and must contain the date(s) on which the report(s) was/were conducted and completed and the inspection firm's EPA certification number.

On October 24th, Dr. DeMuth states that you contacted her office and demanded that the requested reports be provided within two to three days, otherwise you would contact the EPA directly.

On October 25, 2001, Dr. DeMuth stated that you did visit the High School and Southridge Elementary School, verbally requested the AHERA documents and were provided with an opportunity to inspect these documents at both locations. The principal at Southridge advised Dr. DeMuth of your in-person request and, in light of your October 22nd written request for information on all 6 school buildings, Dr. DeMuth contacted you by telephone and set a meeting to review the AHERA documents on October 26, 2001. During that telephone conversation, you advised Dr. DeMuth not to make any copies of anything requested because you wanted to view the materials at the meeting the next day.

On October 26th, you went to the School Town's Administration Center to view the AHERA documents. Dr. DeMuth provided you with the three (3) year inspection reports for each school building and a binder of all inspection reports for Southridge Elementary for years prior to that time. You apparently contested the completeness of this information and Dr. DeMuth stated that she did learn later that Material, Safety Data Sheets had been provided to you during your visit to Southridge Elementary School that were not in the binder. You then apparently pointed to the binder and asked Dr. DeMuth to provide copies of its contents to you.

Dr. DeMuth received the formal complaint you filed with this office on October 29, 2001. That same day, the School Town had contacted you by telephone to request that you come pick up your copy of their response to your written public records request for mold inspection<sup>4</sup> and three (3) year AHERA inspection reports. You picked up these public records on October 30th, which included the information you requested in your written request of October 22, 2001 to the School Town.

## 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." 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. The burden for any nondisclosure generally lies with the public agency, not the person making the request under the APRA. Ind. Code §5-14-3-1.

Under the APRA, "(a)ny person may inspect and copy the public records of a public agency during the regular business hours of the agency, except as provided in section 4 [Indiana Code section 5-14-3-4] of this chapter. Ind. Code §5-14-3-3(a). Further, a public agency may not deny or interfere with the exercise of the right to inspect and copy public records. Ind. Code §5-14-3-3(b).

"Inspect" includes the right to do the following:

(1) Manually transcribe and make notes, abstracts, or memoranda.

\* \* \*

"Copy" includes transcribing by handwriting, photocopying, xerography, duplicating machine, duplicating electronically stored data onto a disk, tape, drum, or any other medium of electronic data storage, and reproducing by any other means.

Indiana Code section 5-14-3-2. (Emphasis added.)

Under the facts presented, the written public records request you filed with the School Town stated that you wanted access to the public records requested, but was not clear as to your intent to inspect or obtain copies of these public records. It was not until October 25th, when you made specific, in-person requests at the school buildings and to Dr. DeMuth by telephone that you stated that you wanted to inspect, rather than obtain copies of public records.

It is your claim that Dr. DeMuth's conduct during your October 26th meeting constituted a denial of your ability to inspect the public records you requested. You base this upon a number of reasons including the fact that the Designated Person under AHERA was not made available to you at that time and that Dr. DeMuth was effectively interfering or attempting to distract you from your efforts to inspect the public records in question.

The APRA provides that you do have a right to inspect public records of a public agency, and to the extent that you made clear requests to this effect<sup>5</sup> it is my opinion that the School Town was obligated to provide this opportunity to you. Further, public agencies may not interfere with this right to inspect as is clearly stated at Indiana Code section 5-14-3-3(b). You raise a number of reasons why you believe your right to inspect was in fact interfered with during your meeting with Dr. DeMuth on October 26th but only those that deal with the actual inspection of the public records in question are relevant to this Opinion. The fact that a staff member was not made available to you during this meeting is not an access to public records issue.

As to the validity of your claims that the School Town, and in particular that Dr. DeMuth interfered with your right to inspect the public records at the Administration Center and the individual school buildings, it is difficult to reach a definitive conclusion. It would appear from your complaint that Dr. DeMuth's comments while you were inspecting the public records inhibited your actual inspection of those documents. On the other hand, according to Dr. DeMuth's timeline, you were not denied the opportunity to inspect the public records at the individual school buildings nor at the Administration Center. Rather, you were not pleased with the public records made available to you at the Administration Center and wanted to inspect them at the school building sites.

Based upon all of this information, it is my opinion that the School Town did not deny you an opportunity to inspect the public records you requested in your October 22nd written request when you appeared at the Administration Center on October 26, 2001. Therefore, I find that there was no denial or interference with your right to inspect the public records maintained at the Administration Center on that date. You, however, expected to be provided all of the same documents that were provided to you at the individual school buildings the day before. There seems, however, to have been a breakdown in communication from the time you filed your written request to the time you visited the school buildings to view the public records on-site. Dr. DeMuth appears to have been acting in response to your written public records request of October 22, 2001 by producing for your inspection, and ultimately providing copies of the documents you specifically identified in that written request. On the other hand, you appear to have been making separate, verbal requests for the opportunity to inspect the records you requested in writing on October 22nd plus additional reports and materials not itemized in your written request at the school buildings and the Administration Center. If there had been more open communication at the time of your meeting on October 26th, a formal complaint on this matter may never have been necessary.

## CONCLUSION

It is my opinion that the School Town of Highland did provide you with an opportunity to inspect the public records available at the Administration Center on October 26, 2001 and that you were not denied access under the APRA.

Sincerely,

Anne Mullin O'Connor

Enclosure

cc: Dr. Judith DeMuth, Asst Supt.  
School Town of Highland

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<sup>1</sup> On October 25th, you also visited two of the school buildings and inspected the AHERA materials. Since you did not have adequate time to inspect all of the materials at the second school building, you asked that the principal contact you by telephone. You received a call from Dr. DeMuth, not the school principal, about your request to inspect these public records.

<sup>2</sup> AHERA apparently requires entities to appoint a "designated person" for purposes of the Act.

<sup>3</sup> You did not specify inspection or copying in your public records request, but the APRA certainly protects your right to do either with respect to disclosable public records.

<sup>4</sup> There are no mold inspection reports, but you were provided with copies of the AHERA inspection reports for the School Town buildings.

<sup>5</sup> It appears that your verbal requests to the two school buildings you visited and telephone conversation with Dr. DeMuth on October 25, 2001 were clearly for you to inspect the public records in question.