
OPINION OF THE PUBLIC ACCESS COUNSELOR

NATHANIEL L. VANCE,
Complainant,

v.

DEKALB CO. CENTRAL UNITED SCHOOL DISTRICT,
Respondent.

Formal Complaint No.
22-FC-116

Luke H. Britt
Public Access Counselor

BRITT, opinion of the counselor:

This advisory opinion is in response to a formal complaint alleging that the DeKalb County Central United School District violated the Access to Public Records Act.¹ Attorney Erik Weber filed an answer on behalf of the School District. In accordance with Indiana Code § 5-14-5-10, I issue the following opinion to the formal complaint received by the Office of the Public Access Counselor on July 26, 2022.

¹ Ind. Code § 5-14-3-1-10.

BACKGROUND

This case involves a dispute about whether the DeKalb County Central United School District (DCCUSD) violated the Access to Public Records Act (APRA) by choosing to withhold personnel records from a former employee.

On or about June 14, 2022, Nathaniel Vance (Complainant) submitted a public records request to DCCUSD seeking a copy of a video that he sent to the administrators of the school district. As a former DCCUSD employee, he originally submitted the video using his work account which he no longer had access to at the time of the public records request.

On July 21, 2022, Vance's records request was denied because he was no longer an employee even though the denial affirmed the video was made part of his personnel file. The statute cited was Indiana Code section 5-14-3-4, however, it did not include a subsection.

In his formal complaint dated July 21, 2022, Vance argues that the personnel file subsection of the APRA entitles him to his own personnel records.

For its part, DCCUSD confirms in its 16 (sixteen) page response that Vance had created and submitted the video to the administration as part of an ongoing dispute regarding his job performance. Vance was ultimately terminated on November 16, 2021, the video seemingly being a factor in his dismissal.

DCCUSD maintains the video as part of Vance's personnel file even though he is no longer an employee. DCCUSD argues the video is not a disclosable public record as it was

independently produced by Vance and not by the School and that Vance should already be in possession of the video since he created it. DCCUSD also appears to conflate the personnel file considerations with the “factual basis” requirement as well as other First Amendment issues.

ANALYSIS

1. The Access to Public Records Act (“APRA”)

It is the public policy of the State of Indiana that all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees. Ind. Code § 5-14-3-1. Further, 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.” *Id.*

There is no dispute that the DeKalb County Central United School District (DCCUSD) is a public agency for the purposes of the APRA; and thus, subject to the law’s disclosure requirements. Ind. Code § 5-14-3-2(q)(6).

Therefore, unless otherwise provided by statute, any person may inspect and copy DCCUSD’s public records during regular business hours. See Ind. Code § 5-14-3-3(a). Even so, APRA contains both exemptions and discretionary exceptions to the general rule of disclosure. See Ind. Code § 5-14-3-4(a)–(b).

2. Defining public record

This opinion considers whether a former employee is entitled to a record submitted to a school's administration while he was still employed and is now part of his personnel file.

Under APRA, "public record" means:

any writing, paper, report, study, map, photograph, book, card, tape recording, or other material that is created, received, retained, maintained, or filed by or with a public agency and which is generated on paper, paper substitutes, photographic media, chemically based media, magnetic or machine readable media, electronically stored data, or any other material, regardless of form or characteristics.

Ind. Code § 5-14-3-2(r). Here, the record is a video received by DCCUSD from the Complainant. By virtue of being received and maintain by DCCUSD, it is a public record.

2.1 Personnel Records

Notably, APRA provides agencies discretion to withhold most of what is in a public employee's personnel file. See Ind. Code § 5-14-3-4(b)(8). As a matter of course, this office generally recommends that the portions of a personnel file which are not mandatory disclosure be withheld to preserve the privacy of the employee.

That same statute, however, declares the following as an independent clause mutually exclusive from the remainder of the subsection:

[A]ll personnel file information shall be made available to the affected employee or the employee's representative.

Id. DCCUSD affirmatively states the video is part of Vance's personnel file. As a result, the remainder of DCCUSD's arguments are largely irrelevant.

The General Assembly has bestowed standing to employees to request the contents of their own personnel file, even those affected by discharge. While the public-at-large would not have standing to request the video in question, Vance does. It matters not his motivation for doing so, he is entitled to it.

As a final matter, a written denial of a request must include the specific statute upon which justifies an agency withholding a record, down to the particular relevant subsection.

CONCLUSION

Based on the foregoing, it is the opinion of this office that the DeKalb County Central United School District violated the Access to Public Records Act by withholding a portion of a personnel file from the affected former employee. Additionally, the original denial failed to state the specific subsection of the law relevant to the denial.



Luke H. Britt
Public Access Counselor

Issued: October 19, 2022