
OPINION OF THE PUBLIC ACCESS COUNSELOR

KEVIN S. SKINNER,
Complainant,

v.

NEW ALBANY-FLOYD COUNTY COMMUNITY
SCHOOLS,
Respondent.

Formal Complaint No.
23-FC-9

Luke H. Britt
Public Access Counselor

BRITT, opinion of the counselor:

This advisory opinion is in response to a formal complaint alleging the New Albany Floyd County Community School Corporation violated the Access to Public Records Act.¹ Attorney John W. Woodard Jr. filed an answer on behalf of the school corporation. In accordance with Indiana Code § 5-14-5-10, I issue the following opinion to the formal

¹ Ind. Code § 5-14-3-1-10.

complaint received by the Office of the Public Access Counselor on January 23, 2023.

BACKGROUND

On September 30, 2022, Kevin S. Skinner (Complainant) visited New Albany High School for a candidate interview with student radio station WNAS. Skinner was a candidate for the board of trustees of the New Albany-Floyd County Consolidated School Corporation (NAFCS).

Although the underlying factual circumstances are in dispute, Skinner ultimately did not tape the candidate segment that day and claims school employees refused to let him back in the building after presenting identification.

On November 23, 2022, Skinner submitted a public records request to NAFCS seeking security camera footage from “ingress nearest to the football field to egress upon [his] departure from the school building and parking lot.” NAFCS acknowledged Skinner’s request six days later.

On December 15, 2023, NAFCS notified Skinner that the requested records were available for pick up. At some point, based on the information provided, Skinner called NAFCS to follow up because he believed he did not receive the entirety of the responsive footage.

On January 8, 2023, NAFCS—through legal counsel—followed up with Skinner to confirm that the school corporation had no other video footage responsive to his request other than the footage it provided.

As a result, on January 23, 2023, Skinner filed a formal complaint alleging NAFCS violated the Access to Public

Records Act (APRA) by improperly denying him access to records. Specifically, Skinner argues NAFCS failed to provide him with any applicable disclosure exceptions for the footage he contends is missing. Moreover, Skinner asserts NAFCS improperly redacted, intentionally omitted, and even falsified records in this case.

On February 13, 2023, NAFCS filed an answer to Skinner's complaint denying any violation of APRA. Specifically, NAFCS denies falsifying, altering, or intentionally withholding any public records responsive to Skinner's request.

NAFCS attributes any gaps in the recordings to one or more of the following: (1) some cameras are motion activated and do not begin recording until activated; (2) not all areas inside or outside the high school are covered by security cameras; (3) NAFCS received Skinner's request more than 14 days after the events in question; and (4) limitations in the software used to identify and locate responsive recordings.

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.*

New Albany-Floyd County Consolidated School Corporation (NAFCS) is a public agency for purposes of APRA; and therefore, subject to its requirements. *See* Ind. Code § 5-14-3-2(q). As a result, unless an exception applies, any person has the right to inspect and copy the school corporation's public records during regular business hours. Ind. Code § 5-14-3-3(a). Indeed, APRA contains mandatory exemptions and discretionary exceptions to the general rule of disclosure. *See* Ind. Code § 5-14-3-4(a) to -(b).

2. Access to security video and retention

Under APRA, security camera footage qualifies as a public record. *See* Ind. Code § 5-14-3-2(r). That means the footage is presumptively disclosable unless an exemption or exception to disclosure applies.

Here, Skinner requested footage from multiple security cameras that captured his visit to New Albany High School in September 2022. NAFCS provided Skinner with a flash drive containing several individual video clips and one file combining the individual videos into one.²

Skinner argues NAFCS violated APRA by not providing all the responsive footage he requested, which the school system denies. Skinner asserts that the school corporation intentionally omitted, deleted, or altered the video footage it provided, which NAFCS also denies.

This case is primarily a factual dispute between the parties. Essentially, Skinner claims NAFCS is withholding

² The video clips in the combined file are not in chronological order.

disclosable video footage while the school corporation argues that it has nothing else responsive to the request.

Indeed, if NAFCS has the responsive video footage—as Skinner contends—APRA requires disclosure. At the same time, if NAFCS does not have additional responsive footage, no further action is required under APRA.

Although APRA puts the burden of nondisclosure on public agencies, this office concludes NAFCS carried the burden in this case. An agency cannot disclose records that do not exist even if a requester insists otherwise. There is simply not enough evidence to the contrary for this office to conclude NAFCS is withholding responsive records.

3. Preservation of public records

Skinner argues that NAFCS intentionally omitted, deleted, or altered the video footage it provided in response to his request.

Again, this is a primarily a factual dispute between the parties.

It is true that public agencies have a duty to protect public records from “loss, alteration, mutilation, or destruction.” Ind. Code § 5-14-3-7. A public official or agency is prohibited from destroying or otherwise disposing of any government record, except in accordance with a record retention schedule or with the written consent of the Indiana Archives and Records Administration. *See* Ind. Code § 5-15-5.1-14.

At the same time, APRA authorizes a public agency to destroy public records in accordance with statutory retention schedules, or for records not subject to a retention schedule,

in the ordinary course of business. *See* Ind. Code § 5-14-3-4(h)(1) to -(2).

It is worth mentioning that video surveillance of school premises, bus, or school-owned property have a 30-day retention period under the Indiana Archives and Records Administration's public school retention schedule.³

Since NAFCS admitted that its 14-day retention policy may be one explanation for any gaps in the responsive footage it provided, this office recommends NAFCS take the necessary steps to align its retention practices with the relevant statutory retention schedule to avoid—if nothing else—similar disputes in the future.

³ EDS-16-042. <https://www.in.gov/iara/files/schoolretentionschedule.pdf>

CONCLUSION

Based on the foregoing, it is the opinion of this office that the New Albany-Floyd County Consolidated School Corporation did not violate the Access to Public Records Act.

This office recommends NAFCS harmonize its surveillance camera retention practices consistent with this opinion and state retention policy EDS-16-042.



Luke H. Britt
Public Access Counselor

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