



STATE OF INDIANA

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December 14, 2009

Mr. James K. Whitaker
James K. Whitaker & Associates
5231 Hohman Avenue
Suite 600
Hammond, IN 46320

Re: Informal Inquiry 09-INF-32; School City of Hammond

Dear Mr. Whitaker:

This is in response to your informal inquiry dated August 20, 2009. I apologize for the delayed response. I took office in September of this year and found a backlog of informal inquiries at that time. I am currently endeavoring to work through the backlog and appreciate your patience in waiting for this opinion.

Pursuant to Ind. Code § 5-14-4-10(5), I issue the following opinion in response to your inquiry regarding the School City of Hammond ("School"). My opinion is based on applicable provisions of the Indiana Access to Public Records Act ("APRA"), I.C. § 5-14-3-1 *et seq.*

Your inquiry relates to a public records request that the School received from an entity called Online Data Services ("ODS"). You first ask whether you can advise ODS that the School does not maintain a list of requested information and is under no legal duty to create one. Yes, because nothing in the APRA requires a public agency to develop records or information pursuant to a request; the APRA requires the public agency to provide access to records already created and maintained by the agency. *See Opinion of the Public Access Counselor 09-FC-135.* If the School does not maintain the other requested records, the School has not violated the APRA by failing to produce them to ODS.

You also ask whether it would be permissible under the APRA to redact social security numbers and employer identification numbers from the records you plan to produce to ODS. I agree that under the APRA, that information may not be disclosed pursuant to I.C. § 5-14-3-4(a)(12). When records contain disclosable and nondisclosable information, a public agency must separate the disclosable information and make it available for inspection and copying upon request. I.C. § 5-14-3-6. Therefore, the APRA requires that the School redact the confidential information and disclose the remainder.

In redacting the social security numbers, the School is required to furnish a letter that cites to I.C. § 5-14-3-4(a)(12) as their authority for denying you that part of the record. Further, unless at least one of the exemptions set forth in I.C. § 5-14-3-4 applies to any other part of the requested records, the records must be disclosed.

Finally, you ask whether the School can charge for copying approximately 757 pages for ODS. Under the APRA, a local agency such as a school may charge only the copying fee set by the governing body (here, the school board) in a fee schedule, and the charge may not exceed the “actual cost of copies.” The APRA defines the “actual cost” as the cost of paper and the per-page cost for use of the copying equipment. I.C. § 5-14-3-8(d). Generally, public agencies will satisfy the APRA by charging ten cents (\$0.10) per page for copies that are not color copies or twenty-five cents (\$0.25) per page for color copies. *See* I.C. § 5-14-3-8(d)(1). Public agencies are under no obligation to mail copies of documents to a requester at the public agencies’ cost. However, previous public access counselors have opined that if a requester pays for shipping the records, a public agency should then mail the copies to the requester. A public agency is entitled to require advanced payment prior to shipping the copies.

If I can be of additional assistance, please do not hesitate to contact me.

Best regards,

A handwritten signature in black ink that reads "Andrew J. Kossack". The signature is written in a cursive style with a large, stylized initial 'A'.

Andrew J. Kossack
Public Access Counselor