

May 26, 2005

Rodney L. Washburn  
2500 Adie Road  
Maryland Heights, MO 63043

*Re: Formal Complaint 05-FC-84; Alleged Violation of the Access to Public Records Act by the Avon Community School Corporation.*

Dear Mr. Washburn:

This is in response to your formal complaint alleging that the Avon Community School Corporation (“School Corporation”) violated the Access to Public Records Act (“APRA”) by failing to respond to your request for records. I find that the School Corporation did not violate the APRA.

#### BACKGROUND

On May 2, 2005 you filed your complaint with this office. The complaint was assigned Formal Complaint number 05-FC-84. Your complaint stated that you had faxed a written request for records to the School Corporation on April 18, 2005. You stated that after seven days passed a denial occurred when the School Corporation failed to reply. You also stated that as of that date, May 2, the School Corporation had not replied. A copy of your request was attached.

My office faxed a copy of your complaint to the School Corporation, using the fax number provided by you in your complaint. A response was requested from the School Corporation by May 17, 2005. When I did not receive a response my office contacted the School Corporation to inquire as to whether a response would be forthcoming.

The School Corporation was surprised to learn of the complaint because they had not received the original fax. It became apparent that the fax number provided in your complaint was not owned by the School Corporation. My office again faxed a copy of your complaint to the number provided by the School Corporation.

Dr. Timothy Ogle, superintendent of the School Corporation, responded to the complaint by faxes dated May 23 and May 24, 2005. Copies of those letters are included for your

reference. In his first response Dr. Ogle stated that the first notice of the complaint was received May 20, 2005, after my office contacted the School Corporation. He also stated that he had no request dated April 18, 2005 from you, nor did he have any request from you as of May 23, 2005.

In his May 24<sup>th</sup> response Dr. Ogle stated, "Fax number (317) 786-6881 is in no way associated with Avon Community School Corporation."

In reviewing the copy of your request, which you attached to your complaint, it appears that the fax number to which you sent your record request is the same fax number that you provided to my office.

#### ANALYSIS

Any person may inspect and copy the public records of a public agency during the agency's regular hours of business, except as provided in section 4 of the APRA. IC 5-14-3-3(a). An agency is required to respond to a request for records within certain timeframes. If a request is mailed, sent by facsimile, or sent by electronic mail, the agency is required to respond within seven days of its receipt of the request. IC 5-14-3-9(b). A response may be an acknowledgment that the request for records was received, and a statement of how and when the public agency intends to comply. A failure to respond timely to a request for records is deemed a denial under the APRA. IC 5-14-3-9(a).

Under IC 5-14-3-9 an agency has seven (7) days from the date it receives a written request to respond, in writing, to the requestor. The School Corporation has stated that it did not receive your request. The copy of the request provided by you shows that the request was sent to a fax number that is not the School Corporation's fax number. If the School Corporation did not receive your request it is under no duty to respond to you. The School Corporation did not violate the APRA when it did not respond to a request it did not receive.

#### CONCLUSION

For the foregoing reasons, I find that the Avon Community School Corporation did not violate the Access to Public Records Act.

Sincerely,

Karen Davis  
Public Access Counselor

cc: Dr. Timothy Ogle