



STATE OF INDIANA

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March 5, 2015

Zachary Baiel
124 Connolly St.
West Lafayette, IN 47906

Re: Formal Complaint 15-FC-28; Alleged Violation of the Access to Public Records Act by the West Lafayette School Corporation

Dear Mr. Baiel,

This advisory opinion is in response to your formal complaint alleging the West Lafayette School Corporation ("WLSC") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et. seq.* The WLSC has responded to your complaint via counsel, Robert C. Reiling, Jr., Esq. Pursuant to Ind. Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on January 28, 2015.

BACKGROUND

Your complaint dated January 28, 2015 alleges the West Lafayette School Corporation violated the Access to Public Records Act by failing to provide the requested information in a timely fashion and improperly requesting a copy fee.

On January 11, 2015, you submitted a public records request to the WLSC. You requested, among other documents, the audio from the December 17, 2014 school meeting. You were provided certain information, but did not receive the audio requested or a copy of a consulting firm's presentation. You reiterated your request for the missing records on January 16, 2015. On January 20, 2015 you were informed that a copy of the presentation was not given to the school and were given a fee estimate for redaction of the records.

You inquired about the redactions and were told the subject matter contained on the audio recording had necessitated redactions. On January 21, 2015, you contend you requested to listen to the recording and were told a fee would need to be paid to listen to the recording.

On February 10, 2014, the WLSC responded maintaining that because of the taping process, portions of record may contain sensitive information which is exempt from APRA. Counsel also upholds the cost for record production is valid, citing Ind. Code § 5-14-3-2(d). Counsel further maintains no violation can be found, because WLSC provided timely responses to your inquiries and levying a cost for the record is fair.

Additionally, counsel contends your repeated requests were unfair and burdensome to WLSC. Counsel cites the fact you attended the December meeting and should be aware of the matters discussed. Further, counsel contends WLSC has incurred attorney's fees to determine what information can be released under Indiana law.

ANALYSIS

At the outset, I encourage the WLSC to take note of the General Assembly's words in Ind. Code § 5-14-3-1: "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."

I emphasize this language as the WLSC appears to lament the responsibility of being a steward of such information. As representative civil servants, public employees have the affirmative duty to respond to public records requests regardless of the volume of inquiries they receive. It should be integrated in their duties. This is not to say they need to neglect other responsibilities in the regular discharge of their business, however, it should be part of their routine duties.

The West Lafayette School Corporation is a public agency for the purposes of the APRA. See Ind. Code § 5-14-3-2(n)(1). Accordingly, any person has the right to inspect and copy WLSC's public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. See Ind. Code § 5-14- 3-3(a).

By itself, a recording of an open meeting should not be subject to redactions. When a properly noticed meeting attended by the public is conducted, anyone has the opportunity to observe and record. See generally, Ind. Code § 5-14-1.5 et. al. Therefore, if confidential subject matter is discussed, it has already been disclosed and loses its confidential or discretionary status.

That being said, a governing body does not have to record its meetings. Only minutes and/or memoranda are required to be kept. However, if a governing body does record a meeting, the recording becomes public record subject to inspection and copying.

WLSC has not identified why or how their recording technology is so limited that it cannot reasonably isolate the meeting in question and duplicate it. I am familiar with recording technology used by public agencies statewide and have not encountered a system which incurs \$75-\$100 to generate a copy.

For example, Indiana courts often use a proprietary system to record proceedings. While the file format of the recording is unique to the judiciary, the courts can isolate the proceeding easily by use of time code and convert the file to a universally recognized file format with very little cost. I have difficulty accepting the WLSC's system is so advanced it could not undertake a similar measure cost-effectively.

By the tone of WLSC's response and the amount charged, one can reasonably infer the fee set to copy a recording of an open board meeting was meant to frustrate access based upon your history as a repeat requester. The contents of the recording of the open meeting should be provided to you without redactions. Costs should be reexamined and limited to isolating the entirety of the open meeting and, if a duplicate is requested, the physical medium upon which it is copied.

Regards,

A handwritten signature in black ink, appearing to read 'LHB', with a long, sweeping underline that extends to the left and then curves back under the initials.

Luke H. Britt
Public Access Counselor

Cc: Robert C. Reiling Jr., Esq.