



STATE OF INDIANA

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March 31, 2016

Mr. Steve Hinnefeld
330 South Jackson Road
Bloomington, Indiana 47403

Re: Formal Complaint 16-FC-34; Alleged Violation of the Access to Public Records Act by State of Indiana, Indiana Department of Education

Dear Mr. Hinnefeld:

This advisory opinion is in response to your formal complaint alleging the State of Indiana, Indiana Department of Education (“DOE”) violated the Access to Public Records Act (“APRA”), Ind. Code § 5-14-3-1 et. seq. DOE has responded to your complaint via Ms. Kelly Bauder, Esq. Her response is enclosed for your review. 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 February 15, 2016.

BACKGROUND

Your complaint dated February 10, 2016 alleges the DOE violated the Access to Public Records by improperly denying your records request.

On January 29, 2016, you requested documents relating to the school points given to each school corporation culminating in an A-F Accountability grade. Your request was denied pursuant to the deliberative materials exemption under Ind. Code § 5-14-3-4(b)(6).

On March 2, 2016 DOE responded. DOE asserts the exemption was proper because the intent of the Indiana legislature was for schools to be held harmless due to an expected drop in ISTEP+ scores. DOE asserts the release of the requested information would be counter to the Indiana legislature’s intent to hold schools harmless.

ANALYSIS

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.” *See Ind. Code § 5-14-3-1*. The State of Indiana, Indiana Department of Education 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 DOE's disclosable 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)*.

DOE has raised the deliberative materials exemption. The General Assembly has provided that records which qualify as deliberative materials may be disclosed at the discretion of the public agency. See *Ind. Code § 5-14-3-4(b)(6)*.

The subdivision provides:

Records that are intra-agency or interagency advisory or deliberative material, including material developed by a private contractor under a contract with a public agency, that are expressions of opinion or are of a speculative nature, and that are communicated for the purpose of decision making.

Deliberative materials include information which reflects, for example, one's ideas, consideration and recommendations on a subject or issue for use in a decision-making process. See *Opinion of the Public Access Counselor 98-FC-1*. The purpose of protecting such communications is to "prevent injury to the quality of agency decisions." *Newman v. Bernstein*, 766 N.E.2d 8, 12 (Ind. Ct. App. 2002).

DOE has stated the release of school points records could lead to injury to DOE's decisions and negatively impact specific schools or individuals due to recent drops in ISTEP+ scores. The deliberative materials exemption is meant to protect the quality of agency decisions. DOE is a public agency and has stated its reasonable belief for potential harm to the decision-making process related to the release of the requested records. Therefore, its use of the deliberative materials exemption was proper. While legislative intent¹ is not an exemption to the Access to Public Records Act, speculative audits and pre-determinative opinions of assessors fits within the definition of deliberative.

CONCLUSION

Based on the forgoing, it is the opinion of the Public Access Counselor the State of Indiana, Indiana Department of Education has not violated the Access to Public Records Act.

Regards,



Luke H. Britt
Public Access Counselor

Cc: Ms. Kelly Bauder, Esq.

¹ *Opinion of the Public Access Counselor 15-FC-69*

