

July 5, 2005

Sent Via Facsimile

Mr. Eric M. Cox, Publisher
The Banner
24 N. Washington Street
Knightstown, IN 46148

Re: Formal Complaint 05-FC-112; Alleged Violation of the Access to Public Records Act by the Charles A. Beard Memorial School Corporation

Dear Mr. Cox:

This is in response to your formal complaint alleging that the Charles A. Beard Memorial School Corporation (the "CAB") violated the Access to Public Records Act ("APRA") by failing to produce records within 37 days of receiving your request. I find that the CAB did not violate the Access to Public Records Act.

BACKGROUND

On April 29, 2005 you sent to the CAB, by facsimile, a request for:

- Copies of any and all registration forms or documentation confirming registration of any CAB administrator or school board member for any in-state or out-of-state conference attended on behalf of the school corporation since January 1, 2000; and
- Copies of all receipts and/or vouchers submitted for reimbursement by any CAB administrator or school board member since January 1, 2000 for food, travel, lodging and/or any other expenses with respect to any in-state or out-of-state conferences attended on behalf of the school corporation.

The CAB issued a responsive letter, undated but sent within seven days of your request. The letter, signed by Superintendent Dr. Hal Jester, stated:

“Due to the fact that the scope of your recent request potentially covers more than 19 persons, for more than five years, involves archived materials, and will require a review of all materials to determine their applicability, a substantial amount of time will be required to compile the extensive list of forms and documentation.

At this time I do not have an estimate of availability as the work will be done by regular staff as time away from required duties is available.”

You filed your formal complaint with the public access counselor on June 6, 2005 after failing to receive any of the records you requested. You allege that the CAB has not produced the records in a timely manner, and you seek an opinion regarding whether records produced after 33 days are timely produced under the APRA. Your e-mail of June 7 to me indicated that you had received a packet from the CAB on June 6 and you had not reviewed the material, but you asked that I opine whether or not producing these records within 37 days (the actual time it took the CAB to produce the records) was reasonable.

The CAB responded to your complaint. I enclose the response for your review. The CAB contends that the APRA does not contain specific timeframes for a public agency to produce records, and that the records were hand-delivered to the CAB within 23 working days of receipt of the request. Further demonstrating that the production time was reasonable, the CAB cited several opinions of this office, and stated that the records identified as responsive to your request covered 19 different persons and covered a period of over five years and four months. In addition, the documents totaled approximately 293 pages, some of which were two-sided. The CAB also noted that your request came at a particularly busy time of year for administrators and staff, when the school year was ending.

ANALYSIS

Any person may inspect and copy the public records of a public agency during the agency's regular business hours, except as provided in section 4 of the APRA. Ind. Code 5-14-3-3(a). The time in which an agency has to respond is set at seven (7) days for requests received by facsimile. IC 5-14-3-9(b). A response may be a letter acknowledging receipt of a request and some statement as to how and when the agency intends to comply. The APRA's requirements for response could not contemplate that records would be produced in every case within that time period (or over 24 hours for in-person or telephone requests) because some requests are voluminous and involve many hours of identifying records, retrieving them from storage, examining them for possible exemptions, and copying them.

The latter factors appear to be in evidence here. Although you ask for only two types of records, the requests are by general description (although specific enough to be “reasonably particular”). The number of pages is fairly significant, although even a small number of pages to be copied may still involve many hours of looking for responsive records.

Your e-mail message to me implied that you believed greater clarity in the area of reasonable production time is needed. You perhaps had contemplated a formulaic approach to the issue. Yet, the inquiry necessarily involves evaluation of the facts and circumstances present in the particular matter. Given the fact that the CAB produced voluminous records within 25 working days (I counted two more than the CAB), during a busy period for the staff and administrators, and involved aged records, I do not believe that the CAB violated the Access to Public Records Act.

That said, I often suggest that public agencies will be served by staying in communication with a requester when the time to produce records will be longer than a week. I also suggest that partial production occur as records are identified and evaluated as responsive records. Adopting a practice of keeping the requester informed of the progress being made will often forestall a complaint. The time and effort that the CAB made to respond to this complaint may have been spent in a ten-minute call once a week to you informing you of progress on the record request or letting you know that several records were now available. I can understand that Dr. Jester may not have been able to accurately assess how long such a request may take to fill when he wrote the responsive letter, but usually an agency may be able to give an accurate estimate as records are being identified.

Also, I note that the CAB's letter states that the work will be done by regular staff as time away from required duties is available. While the APRA states that an agency may regulate material interference with the regular discharge of the functions and duties of the office, IC 5-14-3-7(a), providing persons with information is an essential function of a representative government and an integral part of the routine duties of public official and employees. IC 5-14-3-1. It would be easy to read from Dr. Jester's letter that the work of fulfilling your request would be undertaken only when each and every other duty of the office was completed. In that case, one might wonder whether a busy public agency would ever fill the request. This message only adds to the anxiety one feels when contemplating whether public records will be forthcoming. Including a sentence that states that the agency will tend to the record request but cannot neglect its other duties would not likely have the same impact as the sentence included in the CAB letter.

CONCLUSION

For the foregoing reasons, I find that the CAB has not violated the Access to Public Records Act when it produced records within 37 calendar days of your request.

Sincerely,

Karen Davis
Public Access Counselor

cc: E. Edward Dunsmore