

August 12, 2005

Dorothy L. Starr
12563 Hillside Drive
Plymouth, IN 46563

Re: ~~Formal Complaint 05-FC-144; Alleged Violation of the Access to Public Records Act by the Plymouth Community School Corporation.~~ *Formal Complaint 05-FC-144; Alleged Violation of the Access to Public Records Act*

Dear Ms. Starr:

This is in response to your formal complaint alleging that the Plymouth Community School Corporation (“School Corporation”) violated the Access to Public Records Act (“APRA”) by failing to provide you with the documents that you requested.

BACKGROUND

On July 20, 2005 you filed a formal complaint with the Office of the Public Access Counselor. Your complaint was assigned formal complaint # 05-FC-144.

On June 19, 2005 you sent a request for public records to the School Corporation. Mrs. Donna Mattix, the school treasurer, provided some of the documents that you requested. You spoke with her via telephone on June 28, 2005 to express your disappointment that your request had not been fully addressed. She then transferred you to Dr. Hill to discuss your records request. Dr. Hill indicated that you would need to get the title insurance and deeds from the courthouse. You responded to him that you felt it was his obligation to get those documents for you upon your written request. He stated that he did not have those documents in his possession and declined to provide them to you.

You also complain that you’ve previously encountered difficulty in obtaining documents from the School Corporation although you do not specify the date. A formal complaint must be filed with this office no later than 30 days after the denial. IC 5-14-5-7. Therefore, I will treat that issue as an informal inquiry, which I may incorporate into this formal opinion. You state that you had requested a copy of every billing sheet/invoice that the school had received for work pertinent to the building project. You state that you did not receive any of those billing

sheets/invoices, but did receive a list of the companies that had been paid by the School Corporation.

Dr. John Hill responded to your formal complaint on behalf of the School Corporation, by letter. A copy of that letter is enclosed for your reference. Regarding your complaint that you did not receive the title insurance and deed records that you were seeking, he states that both he and Mrs. Mattix informed you that the School Corporation did not have the documents. He then suggested that you could obtain the copies from the Recorder's Office. He said that you insisted that you preferred to get the copies from him because the School Corporation charges \$0.10 per copy as opposed to the \$1.00 per copy charged by the Recorder. He explained that if he had the documents, he would be most happy to provide them to you.

Regarding your complaint that you had previously been denied records Dr. Hill explained that the School Corporation had contacted you regarding that request. Mrs. Mattix telephoned you to explain the volume of paperwork that would be produced by your request. Dr. Hill states that you inquired about receiving copies of the list of bills without paying all the extra copy expenses. Mrs. Mattix suggested that she could provide you with the Affidavits for Approval of Payment that are presented at each board meeting. You agreed that this would sufficiently answer your request.

ANALYSIS

Any person may inspect and copy the public records of any public agency during the agency's regular business hours. Ind. Code 5-14-3-3(a). Under the Access to Public Records Act, a public agency is required to respond to a request for records within a certain period of time. Failure to respond is deemed a denial of the record. If the public agency intends to deny a record, the denial must be in writing and include a statement of the specific exemption or exemptions that apply to the record, and the name and title or position of the person responsible for the denial. IC 5-14-3-9(c). A response may be acknowledgment that the agency received the request and a statement regarding whether the public agency has responsive records, or when the agency may be able to give a fuller response. A public agency is not required to disclose a record that it does not maintain and is not required to maintain. If the public agency has received a request for a record, and the agency does not maintain the record, it should so state in its response to the request.

"Public records" are any writing, paper, report, study, map, photograph, tape recording or other material that is created, received, retained, maintained or filed by or with a public agency. I.C. 5-14-3-2. You feel that the School Corporation must have these documents, though you do not state the basis for your opinion.¹ If the School Corporation maintains the requested documents, then it has the duty to provide the documents; it cannot require you to obtain the documents from another agency merely because it is more convenient. However, the School Corporation has stated that it does not maintain the documents that you seek. If the requested record is maintained by a separate agency, then the agency may inform you of such. It is not a

¹ If you continue to believe that the School Corporation has the requested records and is not providing them to you, your only recourse is to bring an action under IC 5-14-3-9(e).

violation of the APRA for the School Corporation to inform you that it does not have the documents that you seek. It has no duty to obtain those documents from a separate agency for you.

While the School Corporation has no duty to provide you with documents that it does not maintain, it does have a duty to inform you of whether it maintains the records you seek. The School Corporation gave you a partial response by producing some responsive records, but its initial response fell short of fully addressing all of the records sought in your request. It also failed to issue a written response, which it was required to do under IC 5-14-3-9(c). The School Corporation violated the APRA when it failed to provide you with a response informing you that it does not maintain the records you seek prior to your inquiry as to why all of the documents had not been provided.

Your next concern is that you feel the School Corporation had not complied with an earlier request by providing you with Affidavits for Approval of Payment rather than copies of every billing sheet and invoice for the building project. When a request would return voluminous records, the agency may contact the requestor to discuss the volume of records requested and inform them of the copying cost. The School Corporation did this. You indicated that you were not interested in paying the cost to obtain so many copies and inquired about an alternative. The School Corporation helpfully suggested alternative records that might provide the information you sought. You stated that the alternative documents would be acceptable. Mrs. Mattix told you that if you had any other request after reviewing those documents to let them know.

The School Corporation acted appropriately in contacting you to communicate the volume of your request. You stated that the proposed alternative documents would be acceptable. It is not a violation of the APRA for the School Corporation to rely upon a requestor's statement that alternative documents would satisfy the request. Additionally, I would advise both you and the School Corporation that you may review the documents at the School Corporation's place of business. After reviewing the documents you may determine that you want only a few pages that the School Corporation could then provide for you. Alternatively, you could bring your own equipment to make the copies or, if it has the means to do so, the School Corporation could allow you to make copies on its equipment.²

CONCLUSION

For the foregoing reasons, I find that the Plymouth Community School Corporation violated the Access to Public Records Act when it failed to fully respond, in writing, to your request for public records. It did not violate the Access to Public Records Act when it declined to provide records that it does not maintain.

² If the School Corporation makes its equipment available for you to use it may still charge you the \$0.10 per page copy fee.

Sincerely,

Karen Davis
Public Access Counselor

cc: Dr. John Hill