



STATE OF INDIANA

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September 21, 2011

Ms. Judith A. McEvoy
8175 S. Mitthoeffer Road
Indianapolis, Indiana 46259

Re: Formal Complaint 11-FC-222; Alleged Violation of the Access to Public Records Act by the Central Indiana Education Service Center

Dear Ms. McEvoy:

This advisory opinion is in response to your formal complaint alleging the Central Indiana Education Service Center ("Center") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Mary Ann Dewan, Executive Director, responded on behalf of the Center. Her response is enclosed for your reference.

BACKGROUND

In your complaint, you allege that you submitted an e-mail request to the Center's Business Manager on August 17, 2011 requesting copies of the Center's contract with the Franklin Township School Corporation and other pertinent financial information regarding transportation charges. On August 20, 2011, you submitted another e-mail regarding the status of your inquiry, and the Center responded that Mary Dewan would provide you with the information by the end of the week. As of August 27, 2011, the date you filed your formal complaint with the Public Access Counselor's Office, you have yet to receive any records in response to your request.

In response to your formal complaint, Ms. Dewan advised that the Center had responded to your request in accordance with the APRA. The Center received your initial request on August 17, 2011 and your follow-up inquiry Saturday, August 20, 2011. On Saturday, August 20, 2011, Ms. Dewan attempted to contact you via e-mail, but the message was returned. On Sunday, August 21, 2011, Donna Calhoun, Business Manager for the Center, responded to you request and advised that Ms. Dewan would respond to your request by the end of the week. On August 30, 2011, the Center provided to you copies of all records responsive to your request.

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* I.C. § 5-14-3-1. The Center is a public agency for the purposes of the APRA. *See* I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy the Center’s public records during regular business hours unless the records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. *See* I.C. § 5-14-3-3(a).

A request for records may be oral or written. *See* I.C. § 5-14-3-3(a); § 5-14-3-9(c). If the request is delivered in person and the agency does not respond within 24 hours, the request is deemed denied. *See* I.C. § 5-14-3-9(a). If the request is delivered by mail or facsimile and the agency does not respond to the request within seven (7) days of receipt, the request is deemed denied. *See* I.C. § 5-14-3-9(b). Under the APRA, when a request is made in writing and the agency denies the request, the agency must deny the request in writing and include a statement of the specific exemption or exemptions authorizing the withholding of all or part of the record and the name and title or position of the person responsible for the denial. *See* I.C. § 5-14-3-9(c). A response from the public agency could be an acknowledgement that the request has been received and information regarding how or when the agency intends to comply. Here, the Center responded to your August 17, 2011 written records request on August 21, 2011, as such it has not acted contrary to the requirements of 9 of the APRA.

The APRA does not prescribe timeframes for the actual production of records. The public access counselor has stated repeatedly that records must be produced within a reasonable period of time, based on the facts and circumstances of the request. Considering factors such as the nature of the requests (whether they are broad or narrow), how old the records are, and whether the records must be reviewed and edited to delete nondisclosable material is necessary to determine whether the agency has produced records within a reasonable timeframe. The ultimate burden lies with the public agency to show the time period for producing documents is reasonable. *See Opinion of the Public Access Counselor 02-FC-45*.

The APRA *requires* public agencies to separate and/or redact confidential information in public records before making the disclosable information available for inspection and copying. *See* I.C. § 5-14-3-6(a). (emphasis added). A public agency shall “regulate any material interference with the regular discharge of the functions or duties of the public agency or public employees.” *See* I.C. § 5-14-3-7(a). However, Section 7 does not operate to deny to any person the rights secured by Section 3 of the Access to Public Records Act. *See* I.C. § 5-14-3-7(c); *See also Opinion of the Public Access Counselor 09-FC-115* (two months was not an unreasonable production time where agency director and records request handler recently assumed the duties of another position and needed time to review and redact confidential information); *see also Opinion of the Public Access Counselor 07-FC-327* (three months was not an unreasonable amount of time to

respond to seven requests with approximately 1000 pages of responsive documents; 34 days was not unreasonable amount of time to produce three-page document considering number of other pending requests).

Here, the Center provided all documents responsive to your request within thirteen (13) days of receiving your request. In response to your request, the City either contacted or attempted to contact you via e-mail, in an effort to communicate with you. The Center has also established that it took action on your request during the weekend of August 20-21, 2011, outside of the Center's normal hours of operation. After retrieving the documents that were requested, the Center was required to review the documents pursuant to the APRA. All the while the Center was responding to your requests, it was required to maintain the regular duties required of the office. As such, I do not believe the Center took an unreasonable amount of time to collect, review, and reproduce the records in response to your request.

CONCLUSION

For the foregoing reasons, it is my opinion that Center did not violate the APRA.

Best regards,

A handwritten signature in black ink, appearing to read "J. Hoage". The signature is stylized with a large initial "J" and a cursive "Hoage".

Joseph B. Hoage
Public Access Counselor

cc: Mary Ann Dewan