



STATE OF INDIANA

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July 18, 2012

Mr. Brian Vukadinovich
1129 E. 1300 N.
Wheatfield, Indiana 46392

Re: Formal Complaint 12-FC-167; Alleged Violation of the Access to Public Records Act by the Hanover Community School Corporation

Dear Mr. Vukadinovich:

This advisory opinion is in response to your formal complaint alleging the Hanover Community School Corporation ("School") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Joanne M. Rogers, Attorney, responded on behalf of the School. Her response is enclosed for your reference.

BACKGROUND

In your formal complaint, you alleged that on May 8, 2012, you submitted a request to the School to inspect certain records related to the School's decision to not renew your teaching contract and other public information. You further allege that you received a letter from the School's attorney on May 25, 2012 stating that he was reviewing your request and a response should be ready in the near future. On June 8, 2012, you e-mailed the School's attorney regarding the status of your request and sought the date for which the records would be available for review. Upon receiving no answer, you submitted a further inquiry on June 13, 2012. As of June 22, 2012, the date you filed your formal complaint with the Public Access Counselor's Office, the School has yet to provide any records that are responsive to your request.

In response to your formal complaint, Ms. Rogers advised that in early May, 2012, the School Board informed the Corporation Superintendent; Ms. Carol Kaiser, that they would be seeking to retain new legal counsel. Accordingly, Ms. Kaiser responded to your May 8, 2012 letter and informed you she would begin compiling the records that were responsive to your request. On May 22, 2012, the School retained Mr. William Kaminski to serve as its General Counsel. Working in conjunction with the School, Mr. Kaminski collected and reviewed in excess of 400 pages of records.

Ms. Rogers further noted that during this time you had also has filed an EEOC claim against the School. Ms. Roger's firm represents the School relating to the EEOC

matter. Given Ms. Rogers prior involvement with your case, Mr. Kaminski thought it was advisable for the same firm to handle all matters relating to your records requests and EEOC matter. Thus, Mr. Kaminski forwarded to Ms. Rogers all the records that he had heretofore reviewed. On July 10, 2012, you were informed by Ms. Rogers that all records responsive to your request were available for inspection. The parties originally planned for the inspection to occur on July 13, 2012 at the School Administration Building. However, given the volume of records and the Administration Building's summer hours, a copy of all of the records was scanned to a disk and delivered to you on July 13, 2012. Ms. Rogers further noted that you requested an audio recording that the School is unable to copy; as such you were invited to inspect the recording at that time.

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 School 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 School'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). A response from the public agency could be an acknowledgement that the request has been received and include information regarding how or when the agency intends to comply. Here, you submitted a written request for inspection to the School on May 8, 2012. The School's first response to your written request to inspect did not occur until on or about May 25, 2012. As such, it is my opinion that the School violated to the section 9 of the APRA by failing to respond to your request for inspection within seven (7) days of its receipt.

Effective July 1, 2012, the APRA provides a public agency shall provide records that are responsive to the request within a reasonable time. *See* I.C. § 5-14-3-3(b). The public access counselor has stated that factors to be considered to be considered in determining if the requirements of section 3(a) under the APRA have been met include, 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 APRA requires an agency 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). Section 7 of the APRA requires a public agency to 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). 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*. This office has often suggested a public agency make portions of a response available from time to time when a large number of documents are being reviewed for disclosure. *See Opinions of the Public Access Counselor 06-FC-184; 08-FC-56; 11-FC-172*. Further nothing in the APRA indicates that a public agency's failure to provide "instant access" to the requested records constitutes a denial of access. *See Opinions of the Public Access Counselor 09-FC-192 and 10-FC-121*.

I would initially note that your request submitted to the School was quite broad. You sought to inspect the following records:

- All written and electronic records pertaining to class schedules that have been affected by the decision to RIF teachers to include but not limited to the decision to RIF Brian Vukadinovich.
- All written and electronic records to include but not limited to notes, letters, facsimiles, emails, memos, writings, text messages, etc. between Justin Biggs and Nicole Satterfiled and any and all other school employees, officials and/or representatives that in any way pertain to the discontinuation of classes that were taught by Brian Vukadinovich and that in anyway pertain to the RIFFING of Brian Vukadinovich.
- All written and electronic records that in any way pertain to the preliminary decision to decline to continue the teaching contract of Brian Vukadinovich at the end of the 2011-12 school year.
- All written and electronic record that in any way pertain to the preliminary decision to Justin Biggs that the decision to RIF Vukadinovich is subject to a justifiable decrease in the number of teaching positions.
- All written and electronic record that were generated by Nicole Satterfiled and/or any other Hannover Community School Corporation officials or employees or representatives in connection to any and all matters pertaining to class scheduling matters for the 2012-13 school year to also include records of any deleted or discarded information that pertains to class scheduling matter for the 2012-13 school year.
- All written and electronic records that in any way show class schedules for Brian Vukadinovich for the 2012-13 school year.
- All written and electronic records of student class schedules showing student who were signed up to take Brian Vukadinovich's classes for the 2012-13 school year.

- All written and electronic records of any information that had been deleted or otherwise discarded whether in written or electronic form that pertains to student class schedules showing classes for Brian Vukadinovich for the 2012-13 school year.
- All written and electronic records pertaining to the Hanover Central High School curriculum for the 2012-13 school year.
- All written and electronic records of communications between Justin Biggs and Carol Kaiser that in any way pertains to Brian Vukadinovich to include but not limited to e-mails, notes, letters, memos, writings, facsimiles, text messages, etc., sent or received.
- All written and electronic records of communications between Jason Biggs and any persons, administrators, officials, school board members, employees, representatives, lawyers, etc. that in any way pertain to Brian Vukadinovich to include but not limited to emails, notes, letters, memos, facsimiles, text messages, etc., sent or received.
- Any written and electronic records of any writings of any kind that Justin Biggs made regarding Brian Vukadinovich that were generated for any reason.
- All written and electronic records pertaining to the book titled *The Art and Science of Teaching* reflecting costs and expenses involving invoices for the purchase and distribution of this book, and to include records reflecting how much time and energy was utilized by requiring teachers to read the book and do follow ups on the book during meetings and blogs, etc., and to also include all emails generated by Justin Biggs to the staff regarding this book and blogs that resulted from this book

In addition to the time required of the School to collect all records that were responsive to this request, you submitted a similarly broad records request to the School that was the subject of Formal Complaint 12-FC-168. *See Opinion of the Public Access Counselor 12-FC-168.* In addition to collecting the records, the School was also required to review each record prior to its disclosure to insure that all confidential information was redacted. Failure on the School's part to redact confidential information could result in criminal penalties pursuant to I.C. § 5-14-3-10. Although I would highly encourage the School in the future in responding to requests of this magnitude to provide a general status update on occasion to inform the requestor of the School's efforts, the APRA would not require such conduct. Due to the vast nature of the requests submitted to the School, the requirements that the records are reviewed prior to disclosure, and that all records were provided to you on July 13, 2012, it is my opinion that the School responded to your request in a reasonable period of time.

CONCLUSION

For the foregoing reasons, it is my opinion that the School violated section 9 of the APRA by failing to respond in writing to your written request for records within seven (7) days of receipt. As to all other issues, it is my opinion that the School complied with the requirements of the APRA.

Best regards,

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

Joseph B. Hoage
Public Access Counselor

cc: Joanne M. Rogers