



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-168; 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. 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:

- The personnel file of Justin Biggs, to include but not limited to the application for employment, contract, compensation records, job description, education and training background, previous work experience, dates of first and last employment, information related to the status of any formal charges, the factual basis for any disciplinary action in which final action has been taken and that results in Justin Biggs being disciplined, admonished, or reprimanded, and any and all other complaints submitted against Justin Biggs.
- All written and electronic records pertaining to class schedules that have been affected by the decision to RIF Brian Vukadinovich to include but not limited to class schedules that were generated for the 2012-13 school year and to include any class schedules that were subsequently deleted or discarded and to include any records of any notes or writings of any kind that pertain to the decision to delete or discard any class schedules for the 2012-13 school year.
- All written and electronic records to include but not limited to notes, letters, facsimiles, emails, memos, writings, text messages, etc. to include records, etc. between any and all school officials and/or representatives and/or individuals that in any way pertain to the discontinuation of classes that were taught by Brian Vukadinovich and that in any way pertain to the RIFFING of Brian Vukadinovich.
- All written or electronic records that were generated 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 information from class schedules that pertains to class scheduling matters for the 2012-13 school year.
- 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 issue that Brian Vukadinovich is subject to justifiable decrease in the number of teaching positions.
- All written and electronic records of communication between Carol Kaiser and Justin Biggs that in any way pertain to Brian Vukadinovich to include but not limited to emails, notes, letters, memos, writings, facsimiles, and text messages.
- All written and electronic records pertaining to the Hanover Central High School and Hanover Central Middle School curriculums for the 2012-13 school year
- All written and electronic records pertaining to any outside education institutions and/or organizations that have been or are being considered for implementation of classes at Hanover Central Middle School and Hanover Central High School for the 2012-13 school year.
- All written and electronic records of communications between Carol Kaiser and any persons, administrators, officials, school board members, employees, representatives, lawyers, etc. that in any way pertain to Brian Vukadinovich from any matters to include but not limited to emails, notes, letters, memos, facsimiles, text messages etc., sent or received.
- All written and electronic records pertaining to the employment of C.L.A.S.S. (Connecting Learning Assures Successful Students) organization that met with the teachers during the 2009-10 school year to include but not limited to contracts, fee structures, agreements of any kind, expense reports, invoices, payment records, and all financial records associated with the hiring of substitute teachers while those C.L.A.S.S. sessions took place, to also include financial records of all monies to Barbara Pederson and any other members of this group including breakdown of all expenses for each person and fees paid to each person and to the group.
- All records pertaining to the employment of speakers including but not limited to guest speakers who have appeared and spoken to Hanover teachers and administrators at the beginning of the school year orientation meeting for the past (5) school years to include but not limited to contract, fee structures, agreements, expense reports, invoices, payment records, etc..
- All financial records pertaining to books including the book The Art and Science of Teaching that have been purchased and distributed to the Hanover Central High School and Middle School staff and to any and all other schools within the corporation that were passed out to each teacher

with a directive by Justin Biggs and any other administrators that the books be read and discussed at teachers meetings and discussed in blogs.

- All applications for the principal position at Hanover Central High School for the 2011-12 school year.
- All applications for the principal's position at Hanover Central Middle School for the 2012-13 school year.
- Application of Tony Hiatt for the position of Hanover Central Middle School principal including salary and benefit information and all tangible information relevant to the candidacy of Tony Hiatt.
- All pension agreements for administrators and school employees for 2007 up to the present.
- All contracts of Steven Goff since employed by the Hanover Community School Corporation to the present.
- Separation agreement between Hanover Community School Corporation and Michael P. Livovich.
- Contracts of all Assistant Superintendents and Superintendents for the Hanover Community School Corporation from 2007 to the present.
- Billing records, statements, log in information, and records of calls including phone number for the cell phone used by Jason Biff of which cell phone is the property of the Hanover Community School Corporation.
- All rules, guidelines, policies, etc. pertaining to the usage of the corporation cell phone used by Justin Biggs.

In addition to the time required of the School to collect all records that were responsive to your request, it 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. The School has provided that is collected and reviewed over 400 pages of records in response to your request for records. 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 your request, the requirements that the records are reviewed prior to disclosure, and that you were informed that the records were ready for inspection on July 10, 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 University 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