



# STATE OF INDIANA

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September 19, 2012

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

*Re: Formal Complaint 12-FC-245; 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 Rogers, Attorney, responded on behalf of the School to your formal complaint. Her response is enclosed for your reference.

## BACKGROUND

In your formal complaint, you allege that you submitted a request to the School for the following records:

- Copies of Middle School and High School a.m. and p.m. detention sign-in sheets for the 2011-2012 school year;
- All financial records for the past five years pertaining to fund raisers at the Hanover Central Middle/High School; and
- All financial records for the past five years pertaining to monies that were collected from Hanover Central Middle/High School students for various fines.

In response to your request for the detention sign-in sheets, the School provided that it did not find any records that were responsive to your request. You thereafter advised the School's attorney that certain individuals would have copies of the records that you had requested. The School still did not provide any records that were responsive. In regards to the financial records, you again inquired with the School's attorney challenging its assertion that the records did not exist. As of the August 24, 2012, the date you filed your formal complaint with the Public Access Counselor's Office, the School had still yet to provide any records.

In response to your formal complaint, Ms. Rogers advised that your initial request was made during the School's summer break and it was operating with a "skeleton crew." Further, a key support staff employee resigned at the end of the 2011-12 academic year. The School conducted a diligent search for the records at that time with the resources that were available. Fortunately, the support staff person that resigned returned as a substitute teacher and was able to assist in locating many of the previously "not found" records. The School has now forwarded to Ms. Rogers the following records and/or information for review:

- Middle/High School detention sign-in sheet (2011-12);
- Fundraising financial records from July 1, 2008 through June 30, 2012; financial records pertaining to fundraisers at Middle/High Schools for July 1, 2007 through June 30, 2008 are archived from an old DOS financial system and are not readily retrievable without the assistance of the financial software vendor at an additional cost;
- Records of student replacement ID fees/fines from September 2010 through January 2012. Prior to 2012, ID fees were kept in a black binder that still cannot be located. The binder has been archived as it was from the previous audit period. Moreover, IDs are no longer required to be worn during the school day, thus fewer replacement requests;
- Records pertaining to permit fees will be produced; parking permit fines are not assessed.

Upon the attorney's review of the above-referenced records, they will be produced to you.

#### 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 twenty-four 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 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 information regarding how or when the agency intends to comply. 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).

Generally, if a public agency has no records responsive to a public records request, the agency does not violate the APRA by denying the request. “[T]he APRA governs access to the public records of a public agency that exist; the failure to produce public records that do not exist or are not maintained by the public agency is not a denial under the APRA.” *Opinion of the Public Access Counselor 01-FC-61*; *see also Opinion of the Public Access Counselor 08-FC-113* (“If the records do not exist, certainly the [agency] could not be required to produce a copy....”). Moreover, the APRA does not require a public agency to create a new record in order to satisfy a public records request. *See Opinion of the Public Access Counselor 10-FC-56*. Here, the School advised in its response to your request that it did not maintain any records that were responsive. You thereafter submitted further inquiries to the School, questioning the lack of existence of said records, to which you received no response and/or records. Upon filing a formal complaint, the School has now advised that it has found records that would be responsive to your request. As such, it is my opinion that the School violated the APRA by failing to timely provide all records that were responsive to your request. *See* I.C. § 5-14-3-3(b). As the School has now forwarded the records to its attorney, who will then produce the records after having the opportunity to review them, I trust that this is in satisfaction of your formal complaint.

The APRA requires public agencies to maintain and preserve public records in accordance with applicable retention schedules. *See* I.C. § 5-14-3-4(e). A public agency shall protect public records from loss, alteration, mutilation, or destruction. *See* I.C. § 5-14-3-7(a). A public agency shall further take precautions that protect the contents of public records from unauthorized access, unauthorized access by electronic device, or alteration. *See* I.C. § 5-14-3-7(b). To the extent the School has failed to maintain and preserve its public records in accordance with the applicable retention schedule, it is my opinion that it has acted contrary to the requirements of I.C. § 5-14-3-4(e) and I.C. § 5-14-3-7(a).

## CONCLUSION

For the foregoing reasons, it is my opinion that the School violated the APRA by failing to provide to timely provide all records that were responsive to your request. To the extent the School has failed to maintain and preserve its public records in accordance with the applicable retention schedule, it is my opinion that it has acted contrary to the requirements of I.C. § 5-14-3-4(e) and I.C. § 5-14-3-7(a).

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: Joanne Rogers