



STATE OF INDIANA

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July 29, 2014

Kim Kilbride
C/o The South Bend Tribune
225 W. Colfax Ave.
South Bend, IN 46601

Re: Formal Complaint 14-FC-131; Alleged Violation of the Access to Public Records Act by the John Glenn School Corporation

Dear Ms. Kilbride,

This advisory opinion is in response to your formal complaint alleging the John Glenn School Corporation ("School") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et. seq.* The School has not responded to the complaint despite an invitation to do so on June 27, 2014. Pursuant to Ind. Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on June 26, 2014.

BACKGROUND

Your complaint dated June 19, 2014, alleges the John Glenn School Corporation violated the Access to Public Records Act by not providing records responsive to your request in violation of Ind. Code § 5-14-3-3(b).

On June 9, 2014, you requested copies of all tort claims or notices filed against the School between January 1, 2009 and today (June 9, 2014), as well as copies of all settlement agreements entered into by the John Glenn School Corporation between January 1, 2009 and today (June 9, 2014). The superintendent of the School Corporation responded to your request stating your request lacked reasonable particularity, were not centrally maintained and would take substantial time to research, and they may contain educational records. The superintendent also stated the records were not public documents because they had not been filed with a court. You object to all of these statements and suggest the School may redact student information contained in the educational records under the Family Education Rights and Privacy Act ("FERPA").

DISCUSSION

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 Ind. Code § 5-14-3-1. The John Glenn School Corporation is a public agency for the purposes of the APRA. See Ind. Code § 5-14-3-2(n)(1). Accordingly, any person has the right to inspect and copy the School’s public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. See Ind. Code § 5-14- 3-3(a).

If they exist, the records you seek are unequivocally public records whether it has been filed with a court. The nature of the documentation does not change pursuant to filing with the judiciary. "Public record" means any writing, paper, report, study, map, photograph, book, card, tape recording, or other material that is created, received, retained, maintained, or filed by or with a public agency and which is generated on paper, paper substitutes, photographic media, chemically based media, magnetic or machine readable media, electronically stored data, or any other material, **regardless of form or characteristics**. Emphasis added. See Ind. Code § 5-14- 3-2(o).

The School asserts your request is not reasonably particular; however, you are fairly specific in the records you seek. The request asks for requested copies of all tort claims or notices filed against the School between January 1, 2009 and today (June 9, 2014) as well as copies of all settlement agreements entered into by the John Glenn School Corporation between January 1, 2009 and today (June 9, 2014). Although a particular document is not identified, the kind of records you seek is obvious. A request does not have to identify with pinpoint accuracy the specific record in mind. The Public Access Counselor’s Office has interpreted this provision to mean the public agency must be able to ascertain the records the requestor is seeking in order for the request to be made with reasonable particularity. See *Opinions of the Public Access Counselor 10-FC-57 and 08-FC-176*. If an agency needs clarification regarding a request, the agency should contact the requestor for more specific information. See *Opinion of the Public Access Counselor 02-FC-13*.

See also *Jent v. Fort Wayne Police Dep't*, 973 N.E.2d 30 (2012). The Court in *Jent* wrote:

In response to a request under APRA, a public agency is required to search for, locate, and retrieve records. Depending upon the storage medium, the details provided by the person making the request may or may not enable the agency to locate the records sought.

It stands to reason a school corporation would be able to identify documents related to its participation in litigation with relative ease. Your request is sufficiently narrow.

Finally, the School argues the records may contain educational records protected by FERPA. Under the APRA the School does not have to disclose confidential documents which include those “records declared confidential by state statute.” See Ind. Code § 5-14-3-4(a)(1). Specifically, the records could be declared confidential under the Family Educational Right to Privacy Act (“FERPA”) (20 U.S.C. § 1232g et seq.) and its state law counterpart, Ind. Code § 20-33-7-1, et seq. Ind. Code § 20-33-7-1 defines “Education records” as follows: “As used in this chapter, ‘education records’ means information that: (1) is recorded by a nonpublic or public school; and (2) concerns a student who is or was enrolled in the school.” Under Ind. Code § 20-33-7-3, “[a] school corporation . . . may [not] disclose or report on the education records of a child, including personally identifiable information contained in the education records, without the consent of the child’s parent” except under very limited circumstances.

The same result occurs under FERPA. “The Act states that federal funds are to be withheld from covered entities which have ‘a policy or practice of permitting the release of education records (or personally identifiable information contained therein. . .) of students without the written consent of their parents.’” 20 U.S.C. § 1232g(b)(1); *Owasso Independent School District v. Falvo*, 534 U.S. 429, 429 (2002). “The phrase ‘education records’ is defined, under the Act, as ‘records, files, documents or other materials’ containing information directly related to a student, which are contained by an educational agency or institution or by a person acting for such agency or institution.’” 20 U.S.C. § 1232g(a)(4)(A); *Owasso*, 534 U.S. at 429.

While this may be the case, a public agency must separate the disclosable materials from the non-disclosable information. See Ind. Code § 5-14-3-6 and *Opinion of the Public Access Counselor 14-FC-129*. This School must parse out the information which is deemed confidential or discretionary and release the remainder to you upon request.

CONCLUSION

For the foregoing reasons, it is the Opinion of the Public Access Counselor the John Glenn School Corporation has violated the Access to Public Records Act.

Regards,



Luke H. Britt
Public Access Counselor