



STATE OF INDIANA

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August 20, 2014

Ms. Robin Clay, Esq.
C/o Curlin & Clay Law
8555 Cedar Place Drive, Ste. 112
Indianapolis, IN 46240

Re: Formal Complaint 14-FC-147; Alleged Violation of the Access to Public Records Act by the Indianapolis Public Schools

Dear Ms. Clay,

This advisory opinion is in response to your formal complaint alleging Indianapolis Public Schools ("IPS") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et. seq.* IPS has provided a response to your complaint via Counsel, Ms. Roberta Sabin Recker, Esq. Her response is attached for your review. 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 July 17, 2014.

BACKGROUND

Your complaint dated July 14, 2014, alleges the Indianapolis Public Schools 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 May 9, 2014 and again on May 29, 2014 you submitted a records request to IPS seeking one of your client's personnel files. You did not receive acknowledgement of the receipt of these two requests. On June 25, 2014 you were advised by IPS counsel to submit your client's consent for release of said records. On July 9, 2014, after receiving your client's consent, IPS counsel advised the records would be released on July 11, 2014.

IPS contends that because the first two requests were not marked as APRA requests, they were not treated as such and therefore were not responded to accordingly. Moreover, IPS contends that although July 11, 2014 was the self-imposed deadline for production, they did not violate the APRA by eventually producing the records past that particular deadline.

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 Ind. Code § 5-14-3-1. The Indianapolis School System 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 IPS’ 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).

A request for records may be oral or written. See Ind. Code § 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 Ind. Code § 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 Ind. Code § 5-14-3-9(b). A response from the public agency could be an acknowledgement the request has been received and information regarding how or when the agency intends to comply.

In regard to the first two requests, it is not my opinion a public records request has to be conspicuously marked as such in order to place a public employee on notice that a request has been served. Often a request will be marked as a FOIA or Freedom of Information request instead of APRA. The words APRA or public records do not have to necessarily be invoked. I have reviewed these two requests and have found them sufficiently labeled as requests for records. This should be obvious enough to trigger the APRA obligations.

As for the self-imposed deadline, while it may be poor customer service to miss the date on which the production was promised, it is not a violation of the APRA. The APRA states the production must occur within a reasonable time. See Ind. Code § 5-14-3-3(b). Once consent for the release of the personnel records was submitted on June 25, 2014, IPS had a reasonable time to complete production. I would opine the records should have been produced within 30 calendar days. It appears they were released on July 18, 2014, within that particular timeframe. That being said, the production process *should* have been initiated on or about May 9, 2014.

CONCLUSION

For the foregoing reasons, it is the Opinion of the Indiana Public Access Counselor the Indianapolis Public School system violated the Access to Public Records Act by not responding to your initial records within seven days. They did not violate the APRA by missing their self-imposed deadline for production. I trust the eventual full release of the records has mitigated any harm to your client and IPS has satisfied your request.

Regards,

A handwritten signature in black ink, consisting of stylized initials 'LHB' with a long, sweeping underline.

Luke H. Britt
Public Access Counselor

Cc: Ms. Roberta Sabin Recker, Esq.