



# STATE OF INDIANA

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October 29, 2014

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

*Re: Formal Complaint 14-FC-223; 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.* Mr. Nicholas T. Otis, Esq., of the Newby, Lewis, Kaminski & Jones, LLP Law Offices, responded on behalf of the School. His response is enclosed for your reference. 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 September 30, 2014.

## BACKGROUND

Your complaint alleges the Hanover Community School Corporation violated the Access to Public Records Act by denying your request in violation of Ind. Code § 5-14-3-3(b).

On or about January 17, 2014 you submitted a public records request to the School seeking invoices from the law firm and attorney representing the School in your lawsuit against the Hanover Community School Corporation. The School denied your request stating the records were not created or maintained by the School and therefore could not release them. The School's insurer contracts with the law firm and actually pays the invoices generated by the firm. The School pays a premium to the insurer for liability defense.

You take exception with this position citing both the opinion in *Knightstown Banner, LLC v. Town of Knightstown*, 838 N.E. 2d 1127 (Ind. Ct. App. 2005) ("Knightstown") and *Opinion of the Public Access Counselor 12-FC-289* (Counselor Hoage's Opinion relied on Knightstown in determining legal invoices of this very nature are disclosable public records).

The School argues Knightstown was misapplied by Counselor Hoage and because the records are not created or maintained by the school, they are not public record.

### 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 Hanover Community 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).

The issue in *Advisory Opinion 12-FC-289* is identical to the present case. Your expectation of disclosure based upon the reading of Counselor Hoage’s Opinion is justified. Conversely, my review of the Knightstown case and my application of that case to the current circumstances differ from Counselor Hoage’s opinion.

I rarely dissent from previous established PAC Opinions, and I am familiar with the Knightstown case from other instances; however, I must disagree with Counselor Hoage’s analysis and application of Knightstown to the issue of legal invoices. The agreement to pay and the information on the invoices are between the insurer and the payee. It is unclear whether the School was intended to receive an itemization of the work performed. In Hoage’s opinion he states:

Regardless of whether the School maintains physical copies of the billing records involved, it is my opinion that they would still be considered public records and they are created and/or maintained by either the attorney and/or the insurance carrier *for or on behalf of the School*.

Emphasis added.

I disagree with the conclusion the invoices are created for or on behalf of the School. Unlike Knightstown, which involved a settlement agreement creating an obligation and/or consideration directly affecting the public agency’s legal standing, a legal invoice is a bill of service. The School is not a party to the transaction, but a beneficiary. The School has a contract with the insurance carrier for services performed. The actual bill of sale is between the carrier and the law firm. I cannot draw the conclusion the itemization of services was necessarily intended to be maintained on behalf of the School itself.

That being said, if the invoices or statements were to be sent to the School by the insurer or the firm, it would be obligated to maintain them and release them upon request. This does not appear to be the case in the current instance. Legal invoices are public record, but only if billed or delivered directly to a public agency.

The distinguishing factor between this and the Knightstown fact pattern is the intention of the settlement agreement to bind the School into an affirmative legal responsibility. The only commitment the School has here is paying a premium to the insurer. This Opinion is not meant to water down the Knightstown case – the notion an agency cannot hide behind an attorney’s office to withhold public record is a very important consideration. But the School in this case is a third-party recipient of services pursuant to a contract between two other private entities. I do not believe the Access to Public Records Act contemplates disclosure of records generated by the private-sector principals of such arrangements.

### **CONCLUSION**

For the foregoing reasons, it is the Opinion of the Office of the Public Access Counselor the Hanover Community School Corporation did not violate the Access to Public Records Act.

Regards,

A handwritten signature in black ink, appearing to read 'LHB', with a long, sweeping underline that extends to the left and then curves back under the signature.

Luke H. Britt  
Public Access Counselor

Cc: Mr. Nicholas T. Otis, Esq.