



STATE OF INDIANA

ERIC J. HOLCOMB, Governor

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OPINION OF THE PUBLIC ACCESS COUNSELOR

SHAINA R. CAVAZOS)

Complainants,)

v.)

17-FC-143)

INDIANA VIRTUAL SCHOOL)

Respondent.)

ADVISORY OPINION

July 31, 2017

This advisory opinion is in response to the formal complaint alleging the Indiana Virtual School (“IVS”) violated the Access to Public Records Act (“APRA”). Ind. Code §§ 5-14-3-1–10. The Court has responded via Thomas G. Burroughs Esq., Counsel for the School. In accordance with Indiana Code § 5-14-5-10, I issue the following opinion to the formal complaint received by the Office of the Public Access Counselor on June 23, 2017.

BACKGROUND

In their formal Complaint, the Complainants allege the Indiana Virtual School has failed to supply an agreement upon request.

On or about May 26, 2017, the Complainant submitted a public records request for two service provider agreements. The 2016 provider agreements were supplied, however, Complainant clarified she was seeking the 2015 agreements. On June 12, Complainant was told by IVS the agreements were with the private auditor. When the records were requested by the auditor, the request was denied.

In its response, IVS argues the records were requested of the private auditor, however, they could not be located. After a diligent search, it was determined that IVS or the auditor was no longer in possession of the provider agreements. The vendors likewise were unable to produce the records.



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

Pursuant to the County and Local General Retention Schedule GEN 10-25 (of which public and charter schools are subject) the retention period for a contract or service agreement is ten years after the date of expiration of the contract. According to Ind. Code § 5-14-3-7, a public agency shall protect public records from loss, alteration, mutilation, or destruction. By allowing the record to be misplaced or lost, the IVS has violated the APRA.

All agencies should be mindful that, as stewards of the public trust, protection of public records is a critical operational consideration. While it does not appear as if the oversight was intentional, it is poor practice to lose records. If it were reckless, knowing, or intentional, the act is felonious pursuant to Ind. Code § 5-15-6-8. I would encourage IVS to be mindful of these considerations in the future.

Luke H. Britt

A handwritten signature in black ink, appearing to read "L. Britt".

Public Access Counselor

Cc: Mr. Thomas G. Burroughs, Counsel