
OPINION OF THE PUBLIC ACCESS COUNSELOR

KARA M. KENNEY,
Complainant,

v.

TIPPECANOE SCHOOL CORPORATION,
Respondent.

Formal Complaint No.
24-FC-34

Luke H. Britt
Public Access Counselor

BRITT, opinion of the counselor:

This advisory opinion is in response to a formal complaint alleging the Tippecanoe School Corporation violated the Access to Public Records Act.¹ Attorney Alexander P. Pinegar filed an answer on behalf of 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 April 19, 2024.

¹ Ind. Code § 5-14-3-1-10.

BACKGROUND

In this case, we consider whether the denial of giving the dollar amount of a settlement agreement from a school system for a student previously in the school system was justified.

On February 21, 2024, Kara Kenney (Complainant) of WRTV requested the settlement amount in a particular federal lawsuit. She did not ask for the document itself, instead just asked for information regarding the settlement amount. This request was sent to Dr. Scott Hanback, the Superintendent for the Tippecanoe School Corporation (TSC).

On April 17, 2024, The School denied the request because the record is confidential under federal law, citing FERPA.² He notes that both parties to the settlement agreement are mutually contracted to maintain the record as confidential, and this record could easily identify the student. TCS believes partial redaction would not be sufficient in protecting the privacy of the student.

In response, Ms. Kenney filed a Formal Complaint with this office on April 19, 2024, alleging that she was wrongfully denied the settlement amount.

TCS responded on June 14, 2024. They reason the denial was appropriate because Kenney merely asked for information rather than a record. Therefore, a public agency is not required to answer questions to satisfy a public records request. What is more, the TCS argues that the settlement

² 20 U.S.C. § 1232g(b)(1)

agreement would be covered by FERPA regardless of the manner of her request.

ANALYSIS

1. The Access to Public Records Act

The Access to Public Records Act (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 Tippecanoe School Corporation (TSC) is a public agency for purposes of APRA; and therefore, is subject to law’s requirements. *See* Ind. Code § 5-14-3-2(q). As a result, unless an exception applies, any person has the right to inspect and copy TSC’s public records during regular business hours. Ind. Code § 5-14-3-3(a).

At the same time, APRA contains mandatory exemptions and discretionary exceptions to the general rule of disclosure. *See* Ind. Code § 5-14-3-4(a) to -(b).

Among the exceptions to disclosure includes any documents that are declared confidential by federal law pursuant to Ind. Code § 5-14-3-4(a)(3). TSC particularly cited that FERPA (20 USC 1232(g) § 99.3) prevented them from providing the settlement agreement. However, anticipating this response from the school corporation, Ms. Kenney never requested the form itself, only the dollar amount of the settlement. This leads to questions about asking for information rather than particular documents and if this application of FERPA was appropriate.

2. Requesting information

There is no dispute that Ms. Kenney asked for information rather than the actual settlement agreement. TSC suggests that this request for information does not fall under APRA's purview.

Under APRA, 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.

Ind. Code § 5-14-3-2(r). It is generally the position of the Public Access Counselor that requesting information instead of documents does not align with the underlying understanding of APRA; however, there are circumstances where the request of information may be appropriate.

APRA additionally does not require public agencies to create new documents to fulfill requests.

However, there is a difficult line to draw when the information is readily available in a document that exists, and the requestor only wants that information. Additionally, when there are concerns about privacy and problems with disclosure of the rest of the information in the given document, it may appear that requesting for the information itself is more sensible or practical. Ostensibly, Kenney recognized this in her request.

This office acknowledges that settlement agreements would be a document covered by FERPA when a student is involved. Nonetheless, the analysis does not stop there.

If a public record contains both disclosable and non-disclosable content, a public agency shall separate the material that may be disclosed and make it available. See Ind. Code § 5-14-3-6.

It has long been held by this office that settlement agreements created, received, retained, maintained, or filed by or with a public agency in Indiana are public records under APRA and are subject to disclosure. This is true even if the agreement has a confidentiality clause. However, the agreement may be withheld from disclosure, at least partially, if it falls within one of the narrow exceptions set forth in Indiana Code § 5-14-3-4.

It is the intent of APRA to be construed liberally and its exceptions conservatively. Public agencies should work alongside requesters to help them obtain the information they request without straining for a denial. Although it is generally not a requirement of a public agency to provide mere information, Kenney obviously made the request out of practicality while TSC appears to make an argument based on semantics.

This office does not intend to burden public agencies with the requirement of providing facts to requestors in every circumstance. Ultimately, she would be owed the settlement agreement, but it may be heavily redacted. To save an agency time in circumstances like these, it may be appropriate to simply disclose the singular amount that the settlement cost to fulfill the request.

This is consistent with both section 6.5 and the general premise of APRA that “all persons are entitled to full and complete information regarding the affairs of the government.”

Disclosure of government spending, whether explicitly through a remittance or implicitly through participation in an insurer, is a critical piece of information in fulfilling that goal. Toward that end, Kenney should be provided with any monetary amount implicated in the document.

CONCLUSION

Based on the foregoing, it is the opinion of this office that the Tippecanoe School District should provide the complainant with the information she seeks or redact the document and disclose the appropriate information.

A handwritten signature in black ink, appearing to be 'LHB', written in a cursive style.

Luke H. Britt
Public Access Counselor

Issued: July 30, 2024