



STATE OF INDIANA

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January 15, 2026

Re: Complaint 25-FC-096
Robert Buggs (Complainant) v.
Gary Community School Corporation (Respondent)

This advisory opinion is issued in response to the above-referenced complaint submitted to this office on May 7, 2025.

A Notice of Complaint, along with a copy of the complaint, was sent to the Respondent on October 31, 2025, requesting a formal response by December 3, 2025. A formal response, submitted by Attorney Michael Tolbert of Tolbert & Tolbert LLC on behalf of the Respondent, was received in this office on December 3, 2025.

The complaint alleges that Respondent violated the Open Door Law (ODL) in the way Complainant was removed as Respondent's Appointee to the Gary Public Library Board (Library Board) and that Respondent violated Access to Public Records Act (APRA) by failing to provide copies of the requested records.

ANALYSIS

This complaint includes ODL and APRA issues. Our office has received several submissions from both parties. Many of the issues are outside of the jurisdiction of this office. This opinion seeks to cover the most relevant issues.

ODL requires public agencies to conduct and take official action openly, unless otherwise expressly provided by statute, so people may be fully informed. Indiana Code (IC) 5-14-1.5-1. As a result, the ODL requires all meetings of the governing bodies of public agencies to be open at all times to allow members of the public to observe and record the proceedings. IC 5-14-1.5-3(a).

Complainant asserts that Respondent violated ODL by failing to post notice of a public hearing to discuss the removal of Complainant from the Library Board. Respondent supplied, in exhibit to its response, a copy of the public notice of the public hearing. Complainant acknowledges that he was present at the public hearing, so it was in an open public forum. We find no violation of ODL.

The complaint also alleges that the Respondent failed to follow proper statutory provisions in holding a public hearing, dismissing Complainant as Respondent's Appointee to the Library Board and seeking applicants for and appointing a new member to that Board. Complainant asserts that there was no due process. However, those issues and the process would be under the jurisdiction of Respondent's Board. Related statutory authority falls under Title 36 and other portions of the Indiana Code and does not fall within jurisdiction of this office. Therefore, we will not address those issues in this opinion.

The public policy of APRA states that “[p]roviding persons with the 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.” Indiana Code (IC) 5-14-3-1. Respondent is a public agency for purposes of APRA; and therefore, subject to the requirements. IC 5-14-3-2(q). As a result, unless an exception applies, any person has the right to inspect and copy Respondent's public records during regular business hours. IC 5-14-3-3(a).

Complainant alleges that Respondent violated APRA when it failed to provide all the records requested when Complainant was removed and replaced on the Library Board as Respondent's Appointee. Complainant filed the records request for twelve (12) separate classes of records on April 28, 2025, and the complaint was submitted to this office on May 7, 2025. All responses to the records request were made after the complaint was filed.

Complainant was concerned that his April 28, 2025, APRA requests were hand-delivered but not responded to within 24 hours. However, the submitted requests all contain a “Received by” signature and a date of “4/28/2025” which acknowledges that they were received at that time, which was within the 24-hour window.

APRA states that if a person makes a request by phone or in person, the public entity needs to acknowledge the request within 24 hours. However, if a person submits the request by email, fax or postal mail, the public entity has seven (7) days to acknowledge the request. If the request is not acknowledged within these timeframes, it is considered a constructive denial. IC 5 14-3-4.4(c)(1) & (2).

Once the public entity has acknowledged the request, it has additional “reasonable” time to research and produce the documents that have been requested. “This office has recognized several factors in determining what effects the concept of reasonable time and those factors are the 1) volume of the request, 2) complexity of the request, 3) number of pending requests, 4) staff available to respond to the request or 5) other operational factors that impact the ability to respond to the request.” *Opinion of the Public Access Counselor 25-FC-034.*

Respondent has stated that all of Complainant's record requests have been fulfilled and all responsive records have been delivered. Respondent specifically enumerates June 4, October 15, and October 30 of 2025 as dates when records were delivered to Complainant. Respondent also states that some records were provided multiple times due to multiple requests for the same records, resulting in the records response on October 30, 2025. The dates of record requests paired with the dates of response by Respondent do not result in a determination of unreasonable delay.

Lastly, Respondent raises an issue regarding this office's ability to address this complaint because Complainant filed a Notice of Tort Claim with the Respondent. Respondent also asserts that an APRA request is an inappropriate avenue to skirt the discovery process and inappropriate use of this office.

Complainant is entitled to access public records. It is true that the Public Access Counselor is prohibited from issuing an advisory opinion concerning a specific matter with respect to which a lawsuit has been filed. IC 5-14-4-10 (6). This opinion has noted that this office lacks any jurisdiction over the procedures and processes that were used or took place regarding the removal of Complainant from the Library Board, likely the subject of any lawsuit and the circumstances detailed in the Notice of Tort Claim.

Respondent cites *Advisory Opinion 14-FC-158* of this office as recognizing that the courts have exclusive jurisdiction over discovery matters. We agree.

The same opinion goes on to say, “[t]o be clear, had you made the request before the commencement of the lawsuit or subsequent to its conclusion, you would have been entitled to an APRA request.” We also agree.

The Notice of Tort Claim is a statutory requirement for a claimant to maintain its ability to sue a political subdivision and must be filed within 180 days of the loss. IC 34-13-3-8. It is not litigation, but claiming a right to litigate should the party choose to do so. If the claiming party does not file the notice, it is barred from proceeding with its claim against the political subdivision. Filing a Notice of Tort Claim does not require the party to move forward with a lawsuit.

APRA is available until a lawsuit is filed. This office can review ODL and APRA complaints unless or until a lawsuit is filed.

CONCLUSION

This office finds that Respondent did not violate ODL. This office also finds that Respondent did not violate APRA because it produced the records as requested, potentially the same records on more than one occasion.

Additionally, this office does not consider the filing of a Notice of Tort Claim to be litigation, but preservation of the right to pursue litigation in the future. A pending lawsuit does prohibit this office from rendering an opinion.



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