



STATE OF INDIANA

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May 28, 2009

Diana Vice
4398 West County Road 700 North
Mulberry, Indiana 46058

Re: Formal Complaint 09-FC-121; Alleged Violation of the Access to Public Records Act by the Northwest Indiana Education Service Center

Dear Ms. Vice:

This advisory opinion is in response to your formal complaint alleging the Northwest Indiana Education Service Center ("Center") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by denying you access to records and charging an excessive fee for postage. A copy of the Center's response to the complaint is enclosed for your reference. It is my opinion the Center did not violate the APRA by indicating it does not maintain records responsive to your request. Regarding postage fees, it is my opinion the Center may charge only the actual cost of standard mailing rates.

BACKGROUND

You allege that the Center denied you access to records reference in the minutes of the November 2008 meeting of the Center's Board. You requested a copy of "Opinions favorable to the Service Centers." By letter dated April 28, 2009, the Center indicated it does not have copies of those opinions. You further allege that the Center charged you an excessive amount for postage.

The Center responded to the complaint by letter dated May 21 from Executive Director Charles Costa. The Center explains that while the Board indicated at a meeting that it expected to receive favorable opinions, it did not receive any copies of such opinions and indicates those opinions may not even exist. Regarding the postage charges, Mr. Costa indicates he will send you a new invoice for copy costs and regular postage.

ANALYSIS

The public policy of the APRA states, "[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." I.C. § 5-

14-3-1. The Center is a public agency for the purposes of the APRA. I.C. § 5-14-3-2(m). Accordingly, any person has the right to inspect and copy the public records of the Center during regular business hours unless the public records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. I.C. § 5-14-3-3(a).

A “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. I.C. § 5-14-3-2(n). Nothing in the APRA requires a public agency to *develop* records or information pursuant to a request. The APRA requires the public agency to *provide access* to records already created. If the Center does not maintain any records responsive to your request, the Center has not violated the APRA by not providing you or creating any such records.

Regarding postage, it is the opinion of this office that an agency may charge a requestor for regular postage costs:

There is nothing in the APRA that deals with the cost of mailing public records, but it is my position that so long as a public agency charges only the actual cost of that mailing, then the policy and spirit of the APRA are met. *Opinion of the Public Access Counselor 03-FC-28.*

Following Counselor O’Connor’s opinion, it would also be my opinion the agency may only charge the actual cost associated with standard mailing rates. If a person requests the records be sent by certified or express mail or other mail service, certainly the agency may send records via that method and charge the requestor the actual costs for doing so. Absent a request for a particular service, though, it is my opinion an agency should send the records by standard mail. It is my understanding Mr. Costa has now remedied this problem by sending you a new invoice.

CONCLUSION

For the foregoing reasons, it is my opinion the Center did not violate the APRA by indicating it does not maintain records responsive to your request. Regarding postage fees, it is my opinion the Center may charge only the actual cost of standard mailing rates.

Best regards,



Heather Willis Neal
Public Access Counselor

Cc: Charles Costa, Northwest Indiana Education Service Center