



STATE OF INDIANA

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July 6, 2009

Walter Gregory Wright
2255 Fox Hill Drive
Indianapolis, Indiana 46228

Re: Formal Complaint 09-FC-146; Alleged Violation of the Access to Public Records Act by the Metropolitan School District of Washington Township

Dear Mr. Wright:

This advisory opinion is in response to your formal complaint alleging the Metropolitan School District of Washington Township ("District") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by denying you access to records. The District's response to the complaint is enclosed for your reference. It is my opinion the District has not violated the APRA.

BACKGROUND

You are a member of the District Board of Education ("Board"). You filed the present complaint on June 18, 2009, alleging that on June 3 you sent by electronic mail message to Superintendent James Mervilde a request for access to records. Specifically, you requested Dr. Mervilde's personal expense reports for the period July 1, 2008 through April 30, 2009. You allege that Dr. Mervilde has not responded to the request except to say he would not respond to any electronic mail request made by you.

The District responded to the complaint by letter dated July 2 from attorney Charles Rubright. The District indicates there was no written response to your June 3 request. The District contends, though, that Dr. Mervilde discussed the request with other Board members and you at the June 3 executive session conducted to evaluate Dr. Mervilde's performance. During the evaluation, Dr. Mervilde raised the question how to respond to individual members of the Board who ask him to compile information. The District explains that you requested a similar record in 2007, and you were told at the time that a report would have to be compiled, as the record you requested does not exist. The District contends the same is true today, that the record you have requested does not exist. The District indicates that Dr. Mervilde will compile such a record at the direction of Board. To date a majority of the Board has not directed Dr. Mervilde to do so.

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 District is clearly 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 District 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 request for access to records may be oral or written. I.C. §§ 5-14-3-3(a), 5-14-3-9(c). If the request is delivered by mail or facsimile and the agency does not respond to the request within seven days of receipt, the request is deemed denied. I.C. § 5-14-3-9(b). This office has routinely said that an electronic mail request is comparable to a mailed request, and as such a response should be made within seven days. A response could be an acknowledgement that the request has been received and information regarding how or when the agency intends to comply. There is no requirement that a response be made in writing, unless the request was made in writing *and* the agency is denying access to a record. *See* I.C. § 5-14-3-9.

You allege the District did not respond to your request. The District agrees no written response was made. But here, a written response was not required because the District did not deny access to a record which the District maintains. And during the discussion at the June 3 executive session, Dr. Mervilde specifically addressed your request. In my opinion, this acknowledgement of your request constitutes a response.

Regarding the record at issue, the District contends it does not maintain the specific record. Dr. Mervilde he would need to compile information from different records to develop the report. 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. As such, the District did not violate the APRA by declining to compile data to create a record responsive to your request.

CONCLUSION

For the foregoing reasons, it is my opinion the District has not violated the APRA.

Best regards,



Heather Willis Neal
Public Access Counselor

Cc: Dr. James Mervilde, Metropolitan School District of Washington Township
Charles Rubright, Bose McKinney & Evans LLP