



# STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

PUBLIC ACCESS COUNSELOR  
HEATHER NEAL

Indiana Government Center South  
402 West Washington Street, Room W460  
Indianapolis, Indiana 46204-2745  
Telephone: (317)233-9435  
Fax: (317)233-3091  
1-800-228-6013  
www.IN.gov/pac

July 16, 2009

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

*Re: Formal Complaint 09-FC-151; 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. A copy of the Center's response to the complaint is enclosed for your reference. It is my opinion the Center's response was untimely under the APRA but the Center has not otherwise violated the APRA.

## BACKGROUND

You allege that in May 2009 you sent to the Center a request for copies of two records, an audio recording of a May 13, 2009 Board meeting and a copy of a resignation letter submitted by Dr. Charles Costa. You received from the Center a letter dated June 11 but postmarked June 24. In the letter, Dr. Costa indicated the Center did not maintain an audio recording of the May 13 meeting. Further, the Center claimed the resignation letter was denied pursuant to I.C. § 5-14-3-4(b)(8). You filed the present complaint on June 30 (postmarked June 27), alleging you believe an audio recording does exist and alleging the denial of access to the resignation letter was in violation of the APRA.

The Center responded to the complaint by letter dated July 15 from Dr. Costa. Dr. Costa explains that he understood the Center's procedure regarding audio recordings of meetings to be deletion of the audio recording once minutes of the meeting have been generated. As such, he did not believe a recording of the May 13 meeting still existed. Dr. Costa later learned the recording is still maintained by the Center and has sent you a copy of the recording. Dr. Costa also asserts the resignation letter is excepted from disclosure pursuant to I.C. § 5-14-3-4(b)(8).

## 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 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 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 request for 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 transmission 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).

A response could be an acknowledgement that the request has been received and information regarding how or when the agency intends to comply. There are no prescribed timeframes when the records must be produced by a public agency. A public agency is required to regulate any material interference with the regular discharge of the functions or duties of the public agency or public employees. I.C. § 5-14-3-7(a). However, section 7 does not operate to deny to any person the rights secured by section 3 of the Access to Public Records Act. I.C. § 5-14-3-7(c). Former public access counselors and I have stated that records must be produced within a reasonable period of time, based on the facts and circumstances.

Here, it appears the Center received your request on or about June 5. The Center's response, while dated June 11, was not postmarked and sent until June 24. Since the response was not sent within seven days, the response was untimely under the APRA. *See* I.C. § 5-14-3-9(b).

Regarding the Center's claim that the audio recording did not exist, Dr. Costa now indicates he made that statement in error. He explains that following the procedure as he understood it, the recording would have been deleted. But in reality the recording did still exist, and the Center has now provided you a copy of the recording. The APRA does not address mistake on the part of the agency. I generally advise agencies to be sure the person(s) responsible for responding to requests is familiar with all records of the agency and where they are kept. Here, I see no evidence the Center intended to deny you access to the record but instead made a mistake regarding its existence. As I understand it, that mistake has now been remedied.

Regarding the resignation letter, the APRA excepts from disclosure personnel files of public employees. *See* I.C. § 5-14-3-4(b)(8). Within the personnel file exception are three categories of records which must be provided, notwithstanding the exception. A resignation letter does not fit into any of those three categories. As such, it is my opinion

the resignation letter maintain in the personnel file of Dr. Costa is excepted from disclosure at the discretion of the agency, pursuant to I.C. § 5-14-3-4(b)(8).

#### CONCLUSION

For the foregoing reasons, it is my opinion the Center's response was untimely under the APRA but the Center did not otherwise violate the APRA.

Best regards,



Heather Willis Neal  
Public Access Counselor

Cc: Dr. Charles Costa, Northwest Indiana Education Service Center