



STATE OF INDIANA

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February 22, 2009

Thomas Moss
c/o Paul T. Berkowitz & Associates, Ltd.
123 West Madison Street; Suite 600
Chicago, Illinois 60602

Re: Formal Complaint 09-FC-29; Alleged Violation of the Access to Public Records Act by the Gary Community School Corporation

Dear Mr. Moss:

This advisory opinion is in response to your formal complaint alleging the Gary Community School Corporation ("Corporation") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by denying you access to records. The Corporation's response to the complaint is enclosed for your reference. It is my opinion the Corporation violated the APRA by failing to respond to your request within seven days of receipt.

BACKGROUND

You allege that on December 8, 2008 you submitted a request to the Corporation, seeking copies of contracts and other records related to a contractor employed by the Corporation. You allege you received no response to the request. You further allege that in early January 2009 you telephone Sarita Stevens, Director of Public Information for the Corporation, to inquire about the status. You left a message but did not hear back from her. You telephoned again on January 13, and Ms. Stevens returned your call that day. She indicated she had twelve pages responsive to your request and said she could send the records to you by mail or facsimile transmission. You indicated you could come to the office to inspect and retrieve the records. You agreed to discuss the matter again on January 15. You allege you have made several subsequent calls to the office but that Ms. Stevens has failed to return those calls.

The Corporation responded to the complaint by letter dated February 5. The Corporation contends there was an initial delay in providing the records because the Corporation had to research the request and place inquiries with several departments to locate the records. Ms. Stevens contends she attempted to send the records to you by facsimile transmission on January 13 but was unaware you did not receive the fax until she received a copy of this complaint. The Corporation contends it sent the records to you

again on January 27 and telephoned you to confirm receipt. The Corporation further contends the remainder of the records will be provided to you in the two weeks following the February 5 letter.

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 Corporation 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 Corporation 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 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). The public access counselor has stated that records must be produced within a reasonable period of time, based on the facts and circumstances. Consideration of the nature of the requests (whether they are broad or narrow), how old the records are, and whether the records must be reviewed and edited to delete nondisclosable material are necessary to determine whether the agency has produced records within a reasonable timeframe.

Here, you allege you submitted the request on December 8 and did not hear from the Corporation until January 13, after you had called the office twice. The Corporation does not dispute this timeline. It is my opinion the Corporation violated the APRA by failing to respond to your request within seven days of receipt of the request. If the Corporation needed more time to produce the records, an appropriate response would have been an acknowledgement of receipt of the request and an indication how or when the agency would move forward.

I trust the Corporation has now provided the remainder of the records, as it indicated it would be doing so by February 19.

CONCLUSION

For the foregoing reasons, it is my opinion the Corporation violated the APRA by failing to respond to your request within seven days of receipt.

Best regards,



Heather Willis Neal
Public Access Counselor

Cc: Sarita Stevens, Gary Community School Corporation