



STATE OF INDIANA

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May 4, 2009

Diana Vice
4398 West CR 700 North
Mulberry, Indiana 46058

Re: Formal Complaint 09-FC-94; Alleged Violation of the Access to Public Records Act by the Wilson Education Center

Dear Ms. Vice:

This advisory opinion is in response to your formal complaint alleging the Wilson Education 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. It is my opinion the Center has violated the APRA by requiring you to appear at the office to retrieve the requested records and by denying your agent the opportunity to retrieve the records on your behalf.

BACKGROUND

You have filed a number of complaints against the Center over the past several months. In the most recent complaint, you allege that the Center indicated to you that you would need to appear in person at the office to collect the records. You allege you were later told you could not send an agent to retrieve the records on your behalf. Your complaint was postmarked on March 31, 2009, and my office received it on April 6.

The Center responded to the complaint by electronic mail message dated April 14 from Center Executive Director Phil Partenheimer. It appears from the text of the message, though, that Dr. Partenheimer's response was to the April 9 complaint which you have since withdrawn.

You also submitted an informal inquiry concerning the same issue. You submitted that request on February 15, 2009. In response to that inquiry, the Center contends you are attempting to go outside the rules of discovery by using the APRA to attempt to obtain copies of records. Because the issue presented in the informal inquiry is identical to the issue presented here, I have consolidated the two and issue this one opinion in response.

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).

As I have indicated to Dr. Partenheimer via telephone, it is my opinion nothing in the APRA prohibits a person from sending an agent to obtain copies of records. The APRA provides that any "person" is entitled to access to the records. But nothing provides that the person who requests the records must appear at the office himself or herself to retrieve the records. Further, it is my opinion it is a violation of the APRA to require a person to appear at the office at all to obtain copies of records. If this were the case, it would effectively restrict access for anyone who is incarcerated, confined to home or a facility, or even living a distance from the agency. Further, it would mean that someone who works during the business hours of an agency would be required to take time off work to retrieve records from an agency.

The APRA provides that any person is entitled to inspect and copy the public records of a public agency. *See* I.C. § 5-14-3-3. Regarding copies, the APRA provides that if an agency has reasonable access to a copy machine, the agency must provide at least one copy of a record to the requester. I.C. § 5-14-3-8(e). The agency may charge copy fees in accordance with I.C. § 5-14-3-8.

Nothing in the APRA requires a person to appear at the office of a public agency to retrieve the records. But nothing in the APRA requires an agency to absorb the costs of mailing records to a requester. This office has stated that if a requester chooses to have the records mailed, the agency may charge the actual cost of postage to the requester:

As to the costs charged for postage, it is our opinion that if these records are public records of the Town, then the Town may only charge fees that are authorized under the APRA. As stated in Formal Advisory Opinion 03-FC-28, "(a)lthough there is nothing in the APRA that deals with the cost of mailing public records, it is our opinion that so long as a public agency charges only the actual cost of that mailing, the policy and the spirit of the APRA are met."

Opinion of the Public Access Counselor 04-FC-100.

Regarding the Center's contention that you are attempting to gain access to records outside of the discovery process, the APRA is separate from the discovery process. In *Opinion of the Public Access Counselor 02-FC-38*, the City of Carmel denied a request for access to public records because the City believed the request was an

attempt to by-pass the proper discovery procedures set forth in the Trial Rules. This office did not find any language in the Trial Rules that would prohibit a party in litigation from making a public record request under the APRA.

CONCLUSION

For the foregoing reasons, it is my opinion the Center has violated the APRA by requiring you to appear at the office to retrieve the requested records and by denying your agent the opportunity to retrieve the records on your behalf.

Best regards,



Heather Willis Neal
Public Access Counselor

Cc: Phil Partenheimer, Wilson Education Center
Jeffery Qualkinbush, Barnes & Thornburg LLP