



# STATE OF INDIANA

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May 5, 2009

Todd Van Der Weele  
528 North Maple Street  
Argos, Indiana 46501

*Re: Formal Complaint 09-FC-96; Alleged Violation of the Access to Public Records Act by the Plymouth Community School Corporation*

Dear Mr. Van Der Weele:

This advisory opinion is in response to your formal complaint alleging the Plymouth Community School Corporation ("Corporation") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by denying you access to records. A copy of the Corporation's response to the complaint is enclosed for your reference. It is my opinion the Corporation violated the APRA by denying you access to the salary information but has now corrected the violation by providing you the requested information.

## BACKGROUND

You allege that on April 1, 2009 you appeared at the Administration Building of the Corporation and asked for the salary information related to a particular employee. You allege you were told the information was confidential and you responded that you believed the information was public record. You allege that another employee in the office confirmed the information was confidential. You then telephoned this office and inquired whether the information is confidential. My office confirmed that salary information contained in an agency's records must be disclosed by the agency. You further allege that you returned to the office on April 2 and again the Corporation denied you access to the information. You allege that the superintendent indicated you could sue him and get a court order to obtain the information.

The Corporation responded to the complaint by letter dated April 9 from Superintendent Dan Tyree. The Corporation confirms that you were denied access to the information on April 1. The Superintendent contends that when you appeared on April 2, he denied you access because you had not submitted your request in writing and because he was annoyed by your "very impolite and arrogant attitude." The Corporation contends you have now been provided with the information.

## 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). An agency may require that a request be made in writing, in or on a form prescribed by the agency. I.C. § 5-14-3-3(a). If the request is delivered in person and the agency does not respond within twenty-four hours of receipt, the request is deemed denied. I.C. § 5-14-3-9(a).

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, the Corporation initially denied you access to the salary information on the basis that it is confidential personnel information. Nothing in the APRA declares personnel files as confidential. Confidential records are those which may not be disclosed unless disclosure is required by a state or federal statute or order of the court under the rules of discovery. *See* I.C. § 5-14-3-4(a). Generally, personnel files of public employees are excepted from disclosure at the discretion of the agency. I.C. § 5-14-3-4(b)(8). Certain personnel file information, though, *must* be disclosed upon request. Among that information is compensation of public employees. I.C. § 5-14-3-4(b)(8)(A). The Corporation violated the APRA by denying you access to a record it must disclose, namely a record providing the salary of the employee about whom you inquired.

The Corporation would have been within its authority under the APRA to require your request to be made in writing, as I.C. § 5-14-3-3(a) allows an agency to require a request to be made in writing. Further, nothing in the APRA requires an agency to immediately produce a record. So the Corporation also would have been within its authority to respond to your request with an indication of the amount of time it would take to provide you a copy of the requested record. The Corporation was not within its authority under the APRA, though, to deny the request, regardless of your demeanor at the time of the request.

## CONCLUSION

For the foregoing reasons, it is my opinion the Corporation violated the APRA by denying you access to the salary information but has now corrected the violation by providing you the requested information.

Best regards,



Heather Willis Neal  
Public Access Counselor

Cc: Dan Tyree, Plymouth Community School Corporation