



# STATE OF INDIANA

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July 11, 2011

Mr. Drake W. Shunneson  
7880 Wicker Ave., Suite 300  
St. John, IN 46373

*Re: Informal Inquiry 11-INF-27; Records of the Lake County Department of  
Child Services*

Dear Mr. Shunneson:

This is in response to your informal inquiry regarding Lake County Department of Child Services ("Department"). Pursuant to Ind. Code § 5-14-4-10(5), I issue the following opinion in response to your inquiry. My opinion is based on applicable provisions of the Access to Public Records Act ("APRA"), I.C. § 5-14-3-1 *et seq.* and other relevant statutes.

On March 18, 2011, you sought records on behalf of Campagna Academy ("Academy") from the Lake County Department of Child Services pertaining to an alleged incident that occurred at Campagna Academy on June 11, 2010. Specifically in your request you sought "all records, reports or other info. . . regarding an incident at Campagna Academy on June 11, 2010 involving [four individuals]." Your request also sought confirmation of whether or not governmental action was pursued regarding the four individuals. You state that your records request was provided to Ms. Cynthia Kambesis, the Department's attorney. You advise that you made multiple oral and written requests for these records, all of which were neither responded to by the Department nor Ms. Kambesis. You inquire as to whether the information you requested is disclosable pursuant to the APRA, and as such, should have been produced to the Academy by the Department.

John Wood, Deputy General Counsel for Indiana Department of Child Services, responded to your inquiry via email to this office dated May 21, 2011. In his response, Mr. Wood states that the records requested pertaining to the alleged victim of the incident are confidential and nondisclosable because the victim was a resident of a foster home and, subsequently, a residential facility when the incident allegedly occurred. Mr. Wood states that records relative to such an incident would not be disclosable because the Academy is not "an agency having the legal responsibility to care for a child placed at a child caring institution or at a family foster home when the request was submitted in March." *See* I.C. § 31-27-4-21(b) and I.C. 31-27-3-18(b). Mr. Wood also maintains that

records involving the alleged incident are confidential pursuant to Ind. Code § 31-33-18-2(c), and the Academy is not an agency having the legal responsibility or authorization to care for, treat, or supervise the victim as to allow access to reports or records involving the alleged victim or the victim's family. Finally, Mr. Wood concludes that while any assessment records made regarding the incident are confidential, the records are inaccessible in any event because they have been expunged. Mr. Wood claims that the Department "did receive information about the incident at the Academy and conducted an assessment of the report." Because the assessment was unsubstantiated, the records were expunged in accordance with Ind. Code § 31-33-7-6.5 and Ind. Code § 31-33-26-15.

The public policy of the APRA states that "(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 Department is a public agency for the purposes of the APRA. I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy the Department's public records during regular business hours unless the records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. I.C. § 5-14-3-3(a).

Generally, if a public agency has no records responsive to a public records request, the agency does not violate the APRA by denying the request. "[T]he APRA governs access to the public records of a public agency that exist; the failure to produce public records that do not exist or are not maintained by the public agency is not a denial under the APRA." *Opinion of the Public Access Counselor 01-FC-61*; see also *Opinion of the Public Access Counselor 08-FC-113* ("If the records do not exist, certainly the [agency] could not be required to produce a copy..."). Because it appears that the records have been expunged in accordance with § 31-33-7-6.5 and Ind. Code § 31-33-26-15, the records cannot be produced to the Academy. It does not appear that the records were expunged in a way contrary to law or in violation of any applicable retention schedule. The Department, therefore, did not violate the APRA by failing to provide a record that is no longer in existence.

If I can be of additional assistance, please do not hesitate to contact me.

Best regards,

Andrew J. Kossack  
Public Access Counselor

cc: John Wood