

September 24, 2007

Thomas Purpus
1042 Silver Court
Anderson, Indiana 46012

Re: Informal inquiry

Dear Mr. Purpus:

This is in response to your informal inquiry dated April 14, 2007, with a subsequent request dated April 18. Your inquiries relate to certain records requested from the Anderson Community School Corporation (“Corporation”) pursuant to the Access to Public Records Act (“APRA”) (Ind. Code §5-14-3) as well as actions of the Corporation in relation to the Open Door Law (“ODL”) (Ind. Code §5-14-1.5). In your April 18 communication, you numbered your inquiries 1 through 16.

In inquiries numbered 1 through 5, you ask whether the Corporation violated the APRA by failing to produce requested records within a “just, rational, appropriate, ordinary or usual in the circumstances time period,” by failing to provide records in the time period the Corporation established and by failing to respond to requests within seven days.

Indiana Code §5-14-3-3(a) provides that any person may inspect and copy the public records of any public agency during the regular business hours of the agency, except as provided in section 4 of APRA. A “public record” means any writing, paper, report, study, map, photograph, book, card, tape recording or other material that is created, received, retained, maintained or filed by or with a public agency. I.C. §5-14-3-2.

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's office 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.

In this particular instance, you have provided a volume of information, but the actual facts of the matter are difficult to follow. Regarding your requests for records, since they were provided in writing to the Corporation, the Corporation should have responded within seven calendar days of receipt of the request. You provide in your correspondence the date the requests were posted, but the APRA counts the seven days from the date of receipt of the request. While I do not find evidence of the date of receipt of the request, if a response was not provided to you within seven days of receipt of the request in any instance, the request would be deemed denied. I.C. §5-14-3-9(b). Regarding the time period for production of documents, I appreciate that the Corporation provided you with a time period during which it anticipated the records you requested would be compiled. This is something I recommend agencies do when they cannot produce the records right away. An agency is not bound by this time period, but it is a good starting point.

Here, I do not know from the Corporation its reasoning for taking extra time beyond what was originally indicated to produce the records. But in such a situation, we take into account factors listed above like the nature of the request, how old the records are, and whether the records must be reviewed as well as other factors applicable to a particular situation. In a situation like this one, missing a self-imposed deadline does not necessarily constitute a violation of the APRA on the part of the Corporation. For the records involved, though, I would think that several months would be an unreasonable amount of time to produce the records, absent some extenuating circumstances of which I am not aware.

Regarding your inquiries numbered 6 through 8, you ask whether the Corporation violated the APRA or the ODL by accepting a contract provision intending to suppress disclosure of certain information. While neither the APRA nor the ODL specifically addresses this issue, I do not find any violation of the APRA or the ODL by the Corporation's acceptance of such a provision. However, the Corporation may not rely on such a provision in an agreement to withhold disclosure of otherwise non-exempt records. The Corporation may only withhold from disclosure records exempt from disclosure under section 4. I.C. §5-14-3-3.

Regarding your inquiries numbered 9 through 15, you ask whether the Corporation has violated the APRA or the ODL by disseminating "false, misleading [sic] and/or disingenuous information." Neither the APRA nor the ODL address the issue of providing false information, and as such I believe this to be outside the purview of the public access counselor.

Regarding your final inquiry, number 16, you ask whether the Corporation violated I.C. §5-14-1.5-6.1 by failing to ratify or approve the employment agreement at a meeting open to the public. As you know, an executive session of a governing body may be held only for one of the instances enumerated in the ODL. I.C. §5-14-1.5-6.1. While there are instance for receiving information about and interview prospective employees and for discussing other certain

personnel matters (I.C. §5-14-1.5-6.1(b) (5, 6, 9, and 10)), any final action must be taken at a meeting open to the public. I.C. §5-14-1.5-6.1(c). If final action was taken during an executive session, that would constitute a violation of the ODL by the Corporation.

Best regards,

A handwritten signature in cursive script that reads "Heather Willis Neal".

Heather Willis Neal
Public Access Counselor