

June 2, 2005

Sent Via Facsimile
Frank A. Rizzo
2845 45th Street
Highland, IN 46322

Re: Formal Complaint 05-FC-88; Alleged Violation of the Access to Public Records Act by the Indiana Professional Standards Board.

Dear Mr. Rizzo:

This is in response to your formal complaint alleging that the Indiana Professional Standards Board (“IPSB”) violated the Access to Public Records Act (“APRA”) by failing to timely produce records. I find that the Indiana Professional Standards Board violated the Access to Public Records Act.

BACKGROUND

On May 3, 2005 you filed a complaint with the Office of the Public Access Counselor alleging that the IPSB had not timely produced records in response to your public records request of April 6, 2005. Your formal complaint was assigned complaint # 05-FC-88.

On April 12, 2005 you sent an e-mail request to follow up on your April 6 request. On April 21st you received a letter dated April 14, 2005 from Eleanor Finnel, General Counsel for the IPSB. She acknowledged receipt of your request and stated that the office is in the process of gathering the requested information. She stated that it would be forwarded to you as soon as it was gathered and that there would be a copying fee of \$0.10 per page. She also provided a phone number by which she could be reached if you had any questions or concerns. On Thursday, April 28, 2005 you sent an e-mail to Ms. Finnell inquiring as to when you might receive the requested documents.

On May 3, 2005 when you had not received any further documents from the IPSB you filed this complaint. On May 4, 2005 the IPSB forwarded thirteen (13) documents to you in response to your request. On May 9, 2005 you wrote to this office stating, “IPSB sent me some information as of Friday 5/9/05. However, they failed to include, (or explain the exclusion of)

two items that were covered in my requested: (1) I asked for information on Ms. Gee's teaching experience. (2) I asked for the date Ms. Gee passed her School Leaders Licensure Assessment."

Ms. Finnell responded to your complaint by letter dated May 18, 2005. A copy of that response is included for your reference. Ms. Finnell stated that the IPSB did not deny your access to any records. She also asserted that it did not omit any information in an attempt to deny your access to it. She stated that since receiving your May 9 letter that she had learned that the testing date and teaching experience information is not kept as part of the application file materials. Rather, that information is kept collectively in an electronic database. She indicated that her intent was to satisfy your request by providing all of the information in the application file. She apologized that she was unfamiliar with the information technology and that was the sole reason for the omission of the requested information. She provided additional information to you, in an attempt to satisfy the remainder of your request. She included a copy of the Teacher Inquiry from the Department of Education website, which she indicated is uploaded electronically to the IPSB database. She also included a copy of the printout from Education Testing Service that indicates the date upon which Ms. Gee took the SLLA. She invited you to contact her if anything provided to you was unclear or in any way unresponsive to your request, or if there was additional information that you needed. She also apologized for any inconvenience.

On May 19, 2005 you faxed further correspondence to this office regarding your complaint. You stated that under IC 20-6.1-3-8, the Board is required to maintain a record of an applicant's teaching experience:

The board shall keep a record of:

- (1) all licenses issued;
- (2) all licenses in force; and
- (3) the academic preparation, professional preparation, and teaching experience of each applicant for a license or a license renewal.

You further went on to say that 515 IAC 1-1-8, the rule under which Ms. Gee's license is professionalized, requires: "(e) The standard license in all grade education may be professionalized when the holder has: (1) completed five (5) years of teaching experience in accredited schools subsequent to the issuance of the standard license" Based on this information, you argue that the Professional Standards Board should at a minimum have some documentation of five years of teaching experience at accredited schools. You complain that, "[t]he information on the web does not specify whether her experience was teaching or administrative, if it was in the area of her licensing being professionalized, or if it was at accredited schools."

You also attached documentation showing the information that each school is annually required to report on forms to the Department of Education. Because these forms require annual disclosure of the position of each person working for the school corporation you believe that details on employment history are reported and should be made available to you by IPSB.

ANALYSIS

Any person may inspect and copy the public records of any public agency during the agency's regular business hours, unless the records are excepted from disclosure under section 4 of the APRA. Records that are not created or maintained by the public agency are not required to be disclosed upon a person's request, and an agency is under no obligation to create a record to satisfy a record request, under the APRA. The requestor must state his or her request for records with reasonable particularity. I.C. §5-14-3-3(a)(1).

Failure to Provide Requested Documents

Under the APRA, a public agency denying access in response to a written public records request must put that denial in writing and include the following information:

- A. a statement of the specific exemption or exemptions authorizing the withholding of all or part of the public record; and
- B. the name and title or position of the person responsible for the denial.

Ind. Code § 5-14-3-9(c).

You requested "whatever information you have that is available for release regarding [Gee's] licensing process . . ." and then go on to specify particular items that should be included. In my opinion, your request was reasonably particular to direct the agency to the responsive documents. The agency should be diligent in its search for records that meet the "reasonable particularity" standard. The agency must be aware of all forms of records that it maintains. When responding to a request for public records, the agency should look to all records maintained by it, whether in electronic, paper or other format. It is also a good practice for the agency to itemize the records produced and if it has no record on one of the specific requests, to affirmatively say so.

As of the date of this opinion the IPSB was still searching its records to determine if any other documents would be responsive to your request. If it identifies any additional documents, they should be provided to you. If the agency has no further documentation regarding your request then, under APRA, it has no further duty to create or provide documentation that does not exist. The agency should notify you when it determines whether it has any additional documents to provide.

The Agency's Duty to Review Licensing Information

You further complain that agency has not provided you with specific information concerning Ms. Gee's work history, rather than years of service. You believe that the agency must have this information because the agency is required by IC 20-6.1-3-8 to keep a record of the professional preparation and teaching experience of each applicant; further, 515 IAC 1-1-8 specifies that an applicant must have five (5) years of teaching experience at an accredited school. It is your belief that the agency must, therefore, have documentation of a more detailed work history.

It is not within the purview of this agency to determine whether a governmental entity is meeting its statutory duties beyond the scope of the public access laws. The issue of whether the IPSB is reviewing licensing information in accordance with the statute and rules is not for this office to decide. Therefore, if the IPSB continues to maintain that it has no record of specific work history, no violation of APRA is demonstrated.

You have also complained that the IPSB does not have information that is required to be provided to the Department of Education on forms DOE CE/CP. I cannot find that the IPSB is in violation of the APRA for not providing to you documentation that is submitted to another agency. If you wish to obtain copies of those documents, your request should be directed to the Department of Education.

CONCLUSION

For the foregoing reasons, I find that the Indiana Professional Standards Board violated APRA when it failed to provide you with requested documents or an explanation as to why such documents were not forthcoming.

Sincerely,

Karen Davis
Public Access Counselor

cc: Eleanor Finnell