



STATE OF INDIANA

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October 25, 2010

Mr. Michael G. Phelps
309 E. 8th St.
Brookston, IN 47923

Re: Formal Complaint 10-FC-226; Alleged Violation of the Access to Public Records Act by the Indiana Department of Education

Dear Mr. Phelps:

This advisory opinion is in response to your formal complaint alleging the Indiana Department of Education (the "DOE") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* The DOE's response to your complaint is enclosed for your reference.

BACKGROUND

In your complaint, you allege that on September 3, 2010, you sent the DOE a request for "spread sheet account records for the motorcycle operator education fund for 2000 - 2009." Your letter was sent via registered mail and was received by the DOE on September 8th. As of September 22nd, you had not received a response.

In response to your complaint, DOE Legal Counsel Dana Long acknowledges that the DOE did not respond within seven days as required by the APRA. Ms. Long explains that the request was misdirected internally and was not received by her until September 23rd. On that date, Ms. Long mailed you a letter acknowledging her receipt of your request, advising you of the applicable copy fees, and informing you that the DOE would collect the records and notify you of the cost for copying responsive records. Ms. Long adds that she spoke with you via telephone on September 27th and apologized for the delay in responding. Subsequent to her formal response, Ms. Long informed my office on October 1st that the DOE has now provided you with the information you requested.

ANALYSIS

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 DOE 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 DOE’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).

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 (7) days of receipt, the request is deemed denied. I.C. §5-14-3-9(b). If the request is delivered in person and the agency does not respond within 24 hours, the request is deemed denied. I.C. §5-14-3-9(a). A response from the public agency could be an acknowledgement that the request has been received and information regarding how or when the agency intends to comply. Here, if the DOE failed to respond to your written request within the required seven (7) days, the DOE violated subsection 9(b) of the APRA. It is my understanding that the DOE responded to your request as soon as Ms. Long received it, and that the DOE has provided you with the records responsive to your request.

CONCLUSION

For the foregoing reasons, it is my opinion that the DOE’s response to your request was untimely under the APRA, but the DOE did not otherwise violate the APRA.

Best regards,



Andrew J. Kossack
Public Access Counselor

Cc: Dana Long