



STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

PUBLIC ACCESS COUNSELOR
JOSEPH B. HOAGE

Indiana Government Center South
402 West Washington Street, Room W470
Indianapolis, Indiana 46204-2745
Telephone: (317)234-0906
Fax: (317)233-3091
1-800-228-6013
www.IN.gov/pac

October 1, 2012

Mr. Christopher P. Hartley
2310 E. 11th Street
Indianapolis, Indiana 46201

Re: Formal Complaint 12-FC-281; Alleged Violation of the Access to Public Records Act by the Indianapolis Public Schools

Dear Mr. Hartley:

This advisory opinion is in response to your formal complaint alleging the Indianapolis Public Schools ("School") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Roberta Recker, Attorney, responded in writing to your formal complaint on behalf of the School. Her response is enclosed for your reference.

BACKGROUND

In your formal complaint, you allege that on July 12, 2012, you requested, in part, all "computer logs showing the recipient and sender address of all email sent by or to Superintendent Dr. Eugene White in the period from August 1, 2011 through July 11, 2012." On July 19, 2012, Ms. Recker responded in writing and advised that the School was processing your request. On August 17, 2012, Mr. Recker advised that the email records that were requested were being mailed to you at no charge. Upon receipt of the records, you maintain that the School failed to provide any records in response to your request for computer logs. You submitted a further inquiry regarding your request, but received no response.

In response to your formal complaint, Ms. Recker advised that the School produced all records that it maintained that were responsive to your request. The School does not maintain computer logs for its email application, as such no such record could be provided.

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." *See*

I.C. § 5-14-3-1. The School is a public agency for the purposes of the APRA. *See* I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy the School's public records during regular business hours unless the records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. *See* I.C. § 5-14-3-3(a).

A request for records may be oral or written. *See* I.C. § 5-14-3-3(a); § 5-14-3-9(c). If the request is delivered in person and the agency does not respond within 24 hours, the request is deemed denied. *See* I.C. § 5-14-3-9(a). 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 (emphasis added). *See* I.C. § 5-14-3-9(b). Under the APRA, when a request is made in writing and the agency denies the request, the agency must deny the request in writing and include a statement of the specific exemption or exemptions authorizing the withholding of all or part of the record and the name and title or position of the person responsible for the denial. *See* I.C. § 5-14-3-9(c). 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.

As provided in the School's response, it does not maintain any records that are responsive to your request for computer logs showing the recipient and sender address of all emails sent or received by Dr. White. Ms. Recker advised that the School does not have computer logs for its email application. Generally, if a public agency has no records responsive to a public records request, the agency generally 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...."). Moreover, the APRA does not require a public agency to create a new record in order to satisfy a public records request. *See Opinion of the Public Access Counselor 10-FC-56*. As such, it is my opinion that the School acted contrary to the APRA by failing to inform you in its disclosure of records that it did not maintain any records in response to your request for computer logs. As the School has not provided that it did not maintain such records, it is my opinion that it did not violate the APRA by failing to produce a record that it did not maintain.



STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

PUBLIC ACCESS COUNSELOR
JOSEPH B. HOAGE

Indiana Government Center South
402 West Washington Street, Room W470
Indianapolis, Indiana 46204-2745
Telephone: (317)234-0906
Fax: (317)233-3091
1-800-228-6013
www.IN.gov/pac

CONCLUSION

For the foregoing reasons, it is my opinion that the School acted contrary to the APRA by failing to inform you in its disclosure of records that it did not maintain any records in response to your request for computer logs. As the School has not provided that it did not maintain any such records, it is my opinion that it did not violate the APRA by failing to produce a record that it did not maintain

Best regards,

A handwritten signature in black ink, appearing to read "J. Hoage".

Joseph B. Hoage
Public Access Counselor

cc: Roberta Recker