

March 19, 2008

Lillie Mae Hubbard  
1 East Union Street  
Liberty, Indiana 47353

*Re: Formal Complaint 08-FC-68; Alleged Violation of the Access to Public Records Act by Union County College Corner Joint School District*

Dear Ms. Hubbard:

This advisory opinion is in response to your formal complaint alleging the Union County College Corner Joint School District (“District”) violated the Access to Public Records Act (“APRA”) (Ind. Code 5-14-3) by denying you access to records. I have enclosed a copy of the District’s response to the complaint for your reference. It is my opinion District has not violated the APRA but ultimately bears the burden of proving the superintendent’s book entries are intra-agency deliberative material and as such excepted from disclosure at the District’s discretion.

#### BACKGROUND

You submitted a request for access to a number of records maintained by District by letter dated February 11, 2008. You filed this complaint on February 27, alleging were denied access to two items, budget worksheets created as part of the superintendent’s “book” and school board member health insurance information. You previously filed a complaint related to the same information, and my predecessor issued *Opinion of the Public Access Counselor 07-FC-3* in response.

The District responded to the complaint by letter dated March 17 from attorney Ronald Rychener. Mr. Rychener indicates that the health insurance information has been provided to you. Regarding the entries in the superintendent’s book, Mr. Rychener asserts that these are the same type of materials addressed in *Opinion of the Public Access Counselor 07-FC-3*. The District asserted then and continues to assert the budget entries are intra-agency deliberative material, excepted from disclosure pursuant to I.C. § 5-14-3-4(b)(6), because the records are expressions of opinion and highly speculative in nature and communicated for the purposes of decision making.

## ANALYSIS

The public policy of the APRA states, "(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 District is clearly 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 public records of the District during regular business hours unless the public records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. I.C. § 5-14-3-3(a).

Your complaint relates to two records you requested from the District. First, you requested and did not receive health insurance information for school board members. Those records are subject to public inspection, except any information required or allowed to be withheld from disclosure, as identified in section 4 of the APRA. I.C. § 5-14-3-3(a). I understand the District has now provided you with the health insurance information.

Your second complaint relates to the superintendent's "book," which contains budget information. This issue was addressed by my predecessor in *Opinion of the Public Access Counselor 07-FC-3*, in response to a complaint you filed. In that opinion, Counselor Davis wrote the following:

The School bears the burden of proof that the financial plan is subject to the deliberative materials exemption. *See* IC 5-14-3-1; IC 5-14-3-9(g). To discharge its burden, the School must show that the document is intra-agency, is expression of opinion or speculative, and was communicated for the purpose of decision making. The School avers that the financial plan was intra-agency because it was communicated to the Department of Local Government Finance, a public agency. The School also states that the spreadsheet contained information that was both speculative and embodied the superintendent's opinion with respect to proposed budget cuts. The School's response does not argue that the information was communicated for the purpose of decision making, but that seems implicit from the information provided as to the purpose of the plan's submission to the Department of Local Government Finance.

Nothing in the School's response leads me to a negative conclusion about the financial plan's fitting the deliberative material exemption. Ultimately, a court would view the document *in camera* if you or anyone else filed a lawsuit to compel the School to disclose the financial plan. *See* IC 5-14-3-9(h).

*Opinion of the Public Access Counselor 07-FC-3.*

I agree with the analysis and conclusion by Counselor Davis in the foregoing opinion. While the District would bear the burden of proof in court, it is my opinion the Superintendent's speculation and opinions communicated for the purpose of decision making are excepted from disclosure at the discretion of the District, pursuant to I.C. § 5-14-3-4(b)(6).

CONCLUSION

For the foregoing reasons, it is my opinion the District has not violated the APRA.

Best regards,



Heather Willis Neal  
Public Access Counselor

cc: Ronald K. Rychener, Union County School Corporation Attorney  
Lynn Sheets, Superintendent