



STATE OF INDIANA

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April 26, 2013

Mr. Samuel L. Shaw
627 H Street
Bedford, Indiana 47421

Re: Formal Complaint 13-FC-106; Alleged Violation of the Access to Public Records Act by the Bedford North-Lawrence Community Schools

Dear Mr. Shaw:

This advisory opinion is in response to your formal complaint alleging the Bedford North-Lawrence Community Schools ("School") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* James Pittman, Attorney, responded on behalf of the School. His response is enclosed for your reference.

BACKGROUND

In your formal complaint, you allege that on three occasions you addressed the School Board at an open, public meeting. Thereafter, you submitted a request for a printed copy of your remarks made at the meeting. In response to your request, School Superintendent, Dennis D. Turner, advised that the School does not create or maintain transcripts of its meeting as the Board's meetings are only digitally recorded.

In response to your formal complaint, Mr. Pittman advised that the School maintains audio recordings of all of its public meetings and you have been extended the invitation to listen to the audio recordings of the meetings in question. Further, upon receipt of the respective fees, a copy of the audio recordings will be provided. While the School maintains audio recordings of its public board meetings, it does not transcribe the recordings. As such, the School does not maintain a record responsive to your request.

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).

Generally if a public agency has no records responsive to a public records request, the agency 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. Here, you have requested a written transcript of your comments that were presented at three separate School Board meetings. The School has provided that transcripts have not been created from the digital recordings of said meetings. Upon receipt of the applicable fee, the Board has stated that it will provide you with the audio recording of each meeting that you have requested. In lieu of a copy being provided, the School has also provided that you may also inspect and listen to the recordings. It is my opinion that the School did not violate the APRA by refusing to create a written transcript from the digital recordings of the School Board meetings in response to your request.

CONCLUSION

Based on the foregoing, it is my opinion that the School did not violate the APRA by refusing to create a written transcript from the digital recordings of the School Board meetings in response to your request.

Best regards,

A handwritten signature in black ink, appearing to read 'J. Hoage', written in a cursive style.

Joseph B. Hoage
Public Access Counselor

cc: James Pittman