



**STATE OF INDIANA**  
**MICHAEL R. PENCE, 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](http://www.IN.gov/pac)

June 10, 2013

Ms. Sheila A. Wolfe  
14197 Dove Drive  
Carmel, Indiana 46033

*Re: Formal Complaint 13-FC-163; Alleged Violation of the Access to Public Records Act by the Carmel Clay School Corporation*

Dear Ms. Wolfe:

This advisory opinion is in response to your formal complaint alleging the Carmel Clay School Corporation ("School") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Andrew Manna, Attorney, responded on behalf of the School. His response is enclosed for your reference. I have granted your formal complaint priority status pursuant to 62 Ind. Admin. Code 1-1-1(3)(3).

#### BACKGROUND

In your formal complaint, you provide that on September 25, 2012 you submitted a written request for records to the School for two employee's Secondary Teacher Highly Qualified Verification Forms ("Forms") completed for 2009-2010, 2010-2011, 2011-2012, and 2012-2013. On September 28, 2012, the School acknowledged the receipt of your request. On October 12, 2012, Andrew Manna denied your request in writing pursuant to I.C. § 5-14-3-4(b)(8). On April 22, 2013, you responded to Mr. Manna's denial and challenged the authority of the School to deny your request pursuant to I.C. 5-14-3-4(b)(8). On April 22, 2013, the School responded to your inquiry and advised that it would review your renewed request and respond accordingly.

In response to your formal complaint, Mr. Manna advised that you requested information that pertains to a data sheet that the School is required to file with the Indiana Department of Education. The records are maintained in each employee's personnel file; thus the School elected to exercise its discretion and deny your request pursuant to I.C. § 5-14-3-4(b)(8). However, in order to resolve the issue at hand, the School has now provided all records responsive to your request that are in its possession.

## 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).

As an initial matter, I.C. § 5-14-5-7 provides that a person that chooses to file a formal complaint with the counselor must file the complaint not later than thirty days after the denial. Your initial request for records was denied by the School on October 12, 2012. Your formal complaint was not filed with our office until June 3, 2013. Therefore, you would have standing to file a formal complaint in regards to your October 12, 2012 denial. However, you are entitled to make an informal inquiry about the state's public access laws. The substance of your formal complaint addressing the October 12, 2012 denial will be addressed separately as an informal inquiry. *See* I.C. § 5-14-4-10(5); *Opinion of the Public Access Counselor 13-INF-31*.

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 twenty-four 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 days of receipt, the request is deemed denied. *See* I.C. § 5-14-3-9(b). 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, the School acknowledged in writing your April 22, 2013 request within the time requirements provided under section 9(b) of the APRA.

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). Counselor O’Connor provided the following analysis regarding section 9:

Under the APRA, the burden of proof beyond the written response anticipated under Indiana Code section 5-14-3-9(c) is outlined for any *court action* taken against the public agency for denial under Indiana Code sections 5-14-3-9(e) or (f). If the public agency claimed one of the exemptions from disclosure outlined at Indiana Code section 5-14-3-4(a), then the agency would then have to either “establish the content of the record with adequate specificity and not by relying on a conclusory statement or affidavit” *to the court*. Similarly, if the public agency claims an exemption

under Indiana Code section 5-14-3-4(b), then the agency must prove to the court that the record falls within any one of the exemptions listed in that provision and establish the content of the record with adequate specificity. There is no authority under the APRA that required the IDEM to provide you with a more detailed explanation of the denials other than a statement of the exemption authorizing nondisclosure, but such an explanation would be required if this matter was ever reviewed by a trial court. *Opinion of the Public Access Counselor 01-FC-47.*

The APRA provides that that certain personnel records may be withheld from disclosure:

(b) Except as otherwise provided by subsection (a), the following public records shall be excepted from section 3 of this chapter at the discretion of a public agency:

(8) Personnel files of public employees and files of applicants for public employment, except for:

(A) the name, compensation, job title, business address, business telephone number, job description, education and training background, previous work experience, or dates of first and last employment of present or former officers or employees of the agency;

(B) information relating to the status of any formal charges against the employee; and

(C) the factual basis for a disciplinary action in which final action has been taken and that resulted in the employee being suspended, demoted, or discharged.

However, all personnel file information shall be made available to the affected employee or the employee's representative. This subdivision does not apply to disclosure of personnel information generally on all employees or for groups of employees without the request being particularized by employee name. I.C. § 5-14-3-4(b)(8).

In other words, the information referred to in (A) - (C) above must be released upon receipt of a public records request, but a public agency may withhold any remaining records from the employees personnel file at their discretion. The School has provided that the Forms requested are kept in each employee's personnel file. The School has now elected to exercise its discretion and provide all records in its possession that are responsive to your request. It is my opinion that the School did not violate the APRA in response to your request. *See also Opinion of the Public Access Counselor 13-INF-31.*

## CONCLUSION

For the foregoing reasons, it is my opinion that the School did not violate the APRA in response to your request.

Best regards,

A handwritten signature in black ink, appearing to read "J. Hoage". The signature is stylized with a large initial "J" and a cursive "Hoage".

Joseph B. Hoage  
Public Access Counselor

cc: Andrew Manna