



STATE OF INDIANA

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December 27, 2013

Kristina Kantar, Esq.
9301 Calumet Avenue, Ste. 1F
Munster, IN 46321

Re: Formal Complaint 13-FC-333; Alleged Violation of the Access to Public Records Act by the School City of East Chicago

Dear Ms. Kantar,

This advisory opinion is in response to your formal complaint alleging the School City of East Chicago ("City") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et. seq.* The City responded to your complaint via Mr. Richard L. Lesniak, City contract counsel. His response is enclosed for your review. Pursuant to Ind. Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on November 26, 2013.

BACKGROUND

Your complaint alleges the School City of East Chicago violated the Access to Public Records Act by denying producing records responsive to your request.

On October 4, 2013, you sent a hard copy and an electronic message to City contract counsel Richard L. Lesniak, requesting certain records including emails from employees and Board Members, regarding a client who hired you to settle a wage dispute. Despite several subsequent messages and requests, you finally received some information responsive to your request on November 5, 2013. Unsatisfied that your request had been not wholly fulfilled, you sent an email to Mr. Lesniak again; requesting emails from the School City's server which you believe referenced your client.

After the filing of your formal complaint, Mr. Lesniak responded for the City stating because you are contract, or part-time counsel, for the City, you were under an obligation to contact the school directly instead of his private office. Furthermore, the City had established policies regarding public records requests and your communication did not reflect conformance to those policies. Mr. Lesniak furthermore states he will make best efforts to produce the records you seek, however, certain emails may be missing because the employees and Board Members are no longer employed by the School City.

ANALYSIS

The public policy of the APRA states that “a (p) roviding person 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 Ind. Code § 5-14-3-1. The School City of East Chicago is a public agency for the purposes of the APRA. See Ind. Code § 5-14-3-2(n)(1). Accordingly, any person has the right to inspect and copy the City’s public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. See Ind. Code § 5-14- 3-3(a).

A request for records may be oral or written. See Ind. Code § 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 Ind. Code § 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. See Ind. Code § 5-14-3-9(b). A response from the public agency could be an acknowledgement the request has been received and information regarding how or when the agency intends to comply.

Mr. Lesniak mentions in his response letter he is familiar with your practice and you have settled cases before between your other clients. Moreover, it appears you were under the impression Mr. Lesniak did indeed represent the School City in some capacity. Although he suggests he is not a full-time or in-house counsel of the City, he does have an ongoing attorney-client relationship with them. It is unclear if he is on permanent retainer for his services.

In any case, Mr. Lesniak acknowledged your request on November 5, 2013 and partially satisfied your request. That would trigger, at the least, an implied agency relationship with the school system and he would be your contact going forward. It was not beyond the bounds of reason you would continue to contact him. Mr. Lesniak suggests you should have been contacting the school system all along to obtain information. I disagree in part.

Although I do not believe Mr. Lesniak was under an obligation to respond to your original correspondence, he certainly became a representative of the City when he replied on November 5, 2013. Your reliance on his agency relationship with the City is not unreasonable. From that point on, he would be responsible for either responding himself, or passing the request on to the appropriate official who deals with records requests.

Before November 5, 2013, I cannot find a violation on the part of the City as far as the Access to Public Records Act is concerned. After November 5, the City has a reasonable amount of time to either produce your requested documentation, or to claim a statutory exemption as to why they do not have to do so. In the City’s response, they suggest they may be able to satisfy the remainder of your request; however, some of the email requested may have been deleted off the School City’s server. This would be a violation under Ind. Code § 5-14-3-7(a). If an employee or board member is discharged or

separates from employment, a public agency must still adhere to the Indiana Commission on Public Records' retention schedule found at http://www.in.gov/icpr/files/county_general.pdf. Correspondence must be kept for at least three years.

Mr. Lesniak has indicated he would be responding to your request by December 18, 2013. While I have not been able to ascertain your documents have been produced, it is my sincere hope your request has been satisfied.

CONCLUSION

For the foregoing reasons, it is the Opinion of the Public Access Counselor the School City of East Chicago did not violate the Access to Public Records Act by denying the release of record's responsive to your request; however, the School City may have violated the APRA by not adhering to the State's Records Retention Schedule.

Regards,

A handwritten signature in black ink, appearing to read 'L. Britt', with a long, sweeping underline.

Luke H. Britt
Public Access Counselor

Cc: Mr. Richard J. Lesniak, Esq.