

December 3, 1999

Mr. Martin L. Hensley
7205 Mohawk Lane
Indianapolis, IN 46260

Re: *ADVISORY OPINION No. 99-FC-15:*

Denial of Access to Public Records by the Franklin Township Community School Corporation.

Dear Mr. Hensley:

You filed a formal complaint against the Franklin Township Community School Corporation (hereinafter, "School Corporation") on November 3, 1999. In your complaint, you allege that the School Corporation failed to comply with the requirements of the Access to Public Records Act, Indiana Code chapter 5-14-3 ("APRA.") Specifically, you claim that the School Corporation improperly denied access to correspondence between the high school radio station manager and another radio station manager concerning WIRE in response to your public records request of July 26, 1999. Copies of your complaints were faxed to Superintendent E.B. Carver on November 4, 1999, and a written response was received from Principal Robert Casselman on December 1, 1999. A copy of his written response is enclosed for your reference. For the reasons set forth below, it is my opinion that the School Corporation violated the APRA by failing to disclose the correspondence requested in your July 26, 1999 public records request.

BACKGROUND

According to your complaint, you made a written request to the School Corporation on July 26, 1999, and followed up in writing several times by telephone and in writing. You asked for a copy of the public file for the high school radio station and any "e-mails, letters, or other documentation filed by school concerning WIRE." In a letter dated September 30, 1999, Steve George, station manager for the high school radio station forwarded to you contents of the public file maintained in accordance with Federal Communications Commissions (FCC) regulations. Mr. George specifically excluded correspondence between the school radio station and any other radio station, as these items did not come within the "definition of 'public file.'"

In his response, Mr. Casselman indicated that between the filing of your public records request and the start of the 1999-2000 school year, the school radio station manager resigned and Mr. George was hired on a temporary contract to fill the vacant position. Mr. Casselman asked Mr. George to forward a copy of the public file to you. Mr. George forwarded all of the contents of the public file, but withheld the letter in question based upon the advice of an attorney friend that

he should not disclose the letter because the writer had requested anonymity-which allegedly excludes the letter from the public file. According to Mr. Casselman, this letter is the only item that was not provided in response to your request and he is now prepared to provide you with a copy of the letter.

ANALYSIS

The APRA defines public records as:

any writing, paper, report, study, map, photograph, book, card, tape recording, or other material that is *created*, received, retained, *maintained*, used, or filed by or with a public agency and which is generated on paper, paper substitutes, photographic media, chemically based media, magnetic or machine readable media, electronically stored data, or any other material, regardless of form or characteristics.

Indiana Code α 5-14-3-2 (Emphasis added.) The general rule under the APRA is that any person may inspect and copy the public records of a public agency, except as provided under Indiana Code section 5-14-3-4, the exceptions to access when public records are confidential or nondisclosable at a public agency's discretion. Ind. Code α 5-14-3-3(a). The burden is on the public agency to prove that a public record is not disclosable, not the person making the request. Ind. Code α 5-14-3-1. Further, the public agency must cite to the statutory authority supporting the denial of access in its written response to the requestor. Ind. Code α 5-14-3-9(c)(2).

In the present case, you made a clear request for copies of correspondence filed by the school radio station concerning WIRE. The School Corporation has not claimed that the public record in question was confidential or nondisclosable under Indiana Code section 5-14-3-4.¹ Rather, the radio station manager did not produce the public record because the writer requested anonymity, and therefore, such letters are allegedly not considered part of the public file required to be maintained under federal law. The letter was created within a public agency subject to the APRA, and without a statutory basis for denial of access, the School Corporation should have permitted you the opportunity to inspect and copy the letter. The School Corporation did not cite to any statutory authority, either federal or state, that would support nondisclosure of this letter in response to a public records request under the APRA. As a result of your complaint, the School Corporation has now offered to provide you with a copy of the letter.

In conclusion, absent any statutory authority making the letter from the school radio station manager confidential or otherwise nondisclosable under the APRA, the School Corporation improperly denied access to the letter written by its radio station manager to another radio station concerning WIRE.

CONCLUSION

It is my opinion that the Franklin Township Community School Corporation violated the APRA by failing to disclose the correspondence concerning WIRE in response to your request of July 26, 1999.

Sincerely,

Anne Mullin O'Connor

Enclosure

cc: Mr. Robert Casselman, Principal
Franklin Central High School

¹ Mr. George was apparently advised that requesting anonymity excludes a document from the public file that is open to inspection under the FCC regulations. I reviewed the regulations of the FCC concerning requests that information be granted confidential status. The procedures for requesting such status are involved, and it does not appear that these steps were followed concerning the letter in question. The School Corporation's willingness to release the letter in response to your complaint is further evidence that it was not granted confidential status under FCC regulations. See, 47 CFR § 0.459.