



STATE OF INDIANA

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June 9, 2008

Ellen Chapelle
505 Jefferson Street
Valparaiso, Indiana 46383

Re: Formal Complaint 08-FC-120; Alleged Violation of the Access to Public Records Act by Porter County Education Services

Dear Ms. Chapelle:

This advisory opinion is in response to your formal complaint alleging Porter County Education Services ("the Agency"), violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by failing to provide you records you requested. It is my opinion the Agency has violated the APRA by failing to provide a timely response to the complaint and failing to produce the requested public records.

BACKGROUND

You allege that you appeared in person and submitted to the Agency on April 2, 2008 a request for copies of a number of records. You received a response letter from Jan Rees, Executive Director of the Agency, dated April 9. In the letter Ms. Rees indicated the Agency would make every effort to provide you with the requested information and anticipated doing so within approximately ten business days. You allege that subsequent to the April 9 letter you have been unable to reach Ms. Rees. When you returned to the office to inquire about the request, the staff was unaware of the request and Ms. Rees was unavailable. You filed this complaint on May 12, alleging denial of access.

My office forwarded a copy of the complaint to the Agency and invited the Agency to respond to the complaint. To date my office has not received a response.

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 Agency 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 Agency 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).

A request for records may be oral or written. 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 to the request within twenty four hours of receipt, the request is deemed denied. I.C. § 5-14-3-9(a). Here, you allege you delivered the request in person, and the response from the Agency was dated seven days later. It is my opinion this response is untimely under the APRA.

A response could be an acknowledgement that the request has been received and information regarding how or when the agency intends to comply. There are no prescribed timeframes when the records must be produced by a public agency. A public agency is required to regulate any material interference with the regular discharge of the functions or duties of the public agency or public employees. I.C. § 5-14-3-7(a). However, section 7 does not operate to deny to any person the rights secured by section 3 of the Access to Public Records Act. I.C. § 5-14-3-7(c). The public access counselor has stated that records must be produced within a reasonable period of time, based on the facts and circumstances. Consideration of the nature of the requests (whether they are broad or narrow), how old the records are, and whether the records must be reviewed and edited to delete nondisclosable material are necessary to determine whether the agency has produced records within a reasonable timeframe. I do not believe it is unreasonable for the Agency to take the necessary time to make reasonable efforts to provide you the records in the medium requested. Here, though, it is my understanding it has been nearly two months since you last heard from the Agency regarding the records you requested.

I always counsel public agencies to keep in communication with a requester when a request is taking a considerable length of time to produce or when outstanding issues are present. Here the Agency has made no effort to keep you apprised of the progress of compiling the records or to let you know if any problems have arisen or if some of the records are nondisclosable based on statutory authority. Further, the Agency provided no response to the complaint as to what has caused the delay in production. As such, it is my opinion the Agency has violated the APRA by denying you access to public records.

CONCLUSION

For the foregoing reasons, it is my opinion the Agency has violated the APRA by failing to provide a timely response to the complaint and failing to produce the requested public records.

Best regards,



Heather Willis Neal
Public Access Counselor

cc: Jan Rees, Porter County Education Services