



# STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

PUBLIC ACCESS COUNSELOR  
HEATHER NEAL

Indiana Government Center South  
402 West Washington Street, Room W460  
Indianapolis, Indiana 46204-2745  
Telephone: (317)233-9435  
Fax: (317)233-3091  
1-800-228-6013  
www.IN.gov/pac

July 28, 2008

Diana Vice  
4398 West County Road 700 North  
Mulberry, Indiana 46058

*Re: Formal Complaint 08-FC-178; Alleged Violation of the Access to Public Records Act by the Wilson Education Center*

Dear Ms. Vice:

This advisory opinion is in response to your formal complaint alleging the Wilson Education Center ("Center") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by denying you access to records. The Center's response to the complaint is enclosed for your reference. It is my opinion the Center has not violated the APRA.

## BACKGROUND

You allege that you have been denied access to records you requested from the Center. In the narrative portion of the complaint, you do not specify which records are the subjects of your complaint. I am left, then, to assume the records about which you complain are the records to which the Center refers in its response, contracts between Tremco and any public schools in Indiana as well as draft minutes of a meeting.

You filed this complaint on July 21, 2008, alleging that you require the record for a proceeding before another public agency. Because you have alleged one of the reasons for priority status provided in 62 IAC 1-1-3, priority status was granted.

The Center responded to your complaint by letter dated July 24 from attorney Jeffery Qualkinbush. In response to your complaint related to contracts between Tremco and any public schools in Indiana, the Center contends while it has provided you with records related to roofing projects in the past, the Center maintained those records only as part of the Center's response to an audit conducted by the State Board of Accounts. The Center contends that it does not maintain a copy of a contract between Tremco and the school; the school corporation is the contracting party under Indiana public purchase law.

Regarding the request for minutes of the AEPA (neither party identifies the entity to which the acronym refers), the Center contends that minutes do not yet exist because they are in draft form. Since you have re-worded your request to include draft minutes,

the Center will provide you with a copy of the draft minutes, notwithstanding counsel's opinion that the draft minutes are not subject to disclosure.

## 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 Center 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 Center 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).

Regarding the contracts between Tremco and public schools in Indiana, the Center contends it is not required to maintain a copy of such records and that you should seek the records directly from the school corporations, which are the contracting parties. While the APRA requires an agency to provide access to records it maintains unless and exception to disclosure is present (*See* I.C. § 5-14-3-3), nothing in the APRA requires an agency to maintain records created, received, and/or maintained by another agency. Further, nothing in the APRA requires a public agency to *develop* records or information pursuant to a request. The APRA requires the public agency to *provide access* to records already created. I find no evidence to suggest the Center should be maintaining the records you seek. As such, it is my opinion the Center has not violated the APRA by failing to disclose records it does not maintain nor is required to maintain.

Regarding your original request for a copy of minutes of the AEPA meeting, the Center originally indicated the record does not yet exist, interpreting your request as a request for approved minutes. Since you have now restated your request to include draft minutes, I had the opportunity to speak to Mr. Qualkinbush regarding the disclosure of draft minutes. While the Center may not agree with the analysis, it has long been the opinion of public access counselors that draft minutes are public records:

Applying these principles of statutory construction, it is clear that draft or proposed minutes of public meetings are merely summaries of information received, not deliberative material. While there is naturally a concern about accuracy in draft or proposed minutes, there is no provision in the APRA that would make such information nondisclosable. It is always important, however, that the recipient of the information is notified that the draft is subject to change and approval of the appropriate person or governing body. In this way, disclosure is possible, but the concern about someone relying upon the draft or proposed minutes is minimized.

*Opinion of the Public Access Counselor 98-FC-08*, available at <http://www.in.gov/pac/advisory/files/op98-8.pdf>.

It is my opinion the copy of the draft minutes of the AEPA meeting maintained by the Center is a disclosable public record under the APRA. It is my understanding the Center has now sent or is preparing to send to you a copy of the draft minutes.

#### CONCLUSION

For the foregoing reasons, it is my opinion the Wilson Education Center has not violated the APRA.

Best regards,



Heather Willis Neal  
Public Access Counselor

Cc: Jeffery Qualkinbush, Barnes & Thornburg LLP  
Larry Risk, Wilson Education Center