



# STATE OF INDIANA

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December 8, 2008

Brian Sloneker  
5 Iris Avenue  
Indianapolis, Indiana 46241

*Re: Formal Complaint 08-FC-245; Alleged Violation of the Access to Public Records Act by Carmel Clay Schools*

Dear Mr. Sloneker:

This advisory opinion is in response to your formal complaint alleging Carmel Clay Schools ("Secretary") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by denying you access to records. A copy of CCS's response to the complaint is enclosed for your reference. It is my opinion CCS has not violated the APRA.

## BACKGROUND

You allege CCS violated the APRA by denying you access to records. You allege you submitted a request for access to the cell phone of Deanna Stroh, a principal at one of CCS's schools. You allege you made the request by electronic mail sent on November 12, 2008, and CCS denied you access by requesting a restraining order through the Hamilton county courts. You further allege CCS has taken an unreasonable amount of time to produce other records, but you provide no further detail on this point. You filed this complaint on December 1. You requested priority status pursuant to 62 IAC 1-1-3. Because you contend the records are necessary for a proceeding before another public agency, priority status was granted.

CCS responded to the complaint by letter dated December 5 from attorney Seamus Boyce. CCS contends that it cannot respond in detail to your second allegation, that CCS has taken an unreasonable amount of time to produce records, because you have not provided any detail regarding this allegation. Regarding your primary allegation, CCS assumes you meant to request the telephone records associated with Ms. Stroh since the APRA would not require CCS to provide you with the actual cellular telephone. CCS contends it has not denied you access to the records but instead has declined to provide you access until a court rules on the motion for protective order. CCS indicates that it will take action once the court rules on the motion.

## 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. CCS is clearly a public agency for the purposes of the APRA. I.C. § 5-14-3-2(m). As such, any person has the right to inspect and copy the public records of CCS during regular business hours unless the public records are excepted from disclosure as confidential or otherwise nondisclosable. 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 by mail or facsimile and the agency does not respond to the request within seven days of receipt, the request is deemed denied. I.C. § 5-14-3-9(b).

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). This office 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.

Here, CCS provided you a response to your request, indicating it would not provide you copies of the records until a court rules on the motion for protective order. This office has issued numerous opinions indicating that records must be produced in a reasonable amount of time considering the facts and circumstances. Here, CCS has asked a court to weigh in on the issue of disclosure of the records. At this point, it is my opinion it is not unreasonable for CCS to await the court's decision before proceeding.

Should CCS deny you access to the records after receiving the court's decision and should you believe the denial to be in violation of the APRA, you may file an additional complaint with this office. I decline to issue an opinion today, though, regarding the substantive issue of whether the records in question should be disclosed since that is not the issue presented in the complaint and since the matter is pending before a court.

Regarding your contention that CCS has taken an unreasonable amount of time to produce records in response to previous requests, you have not provided enough information for me to issue an opinion on this point.

CONCLUSION

For the foregoing reasons, it is my opinion CCS has not violated the APRA.

Best regards,



Heather Willis Neal  
Public Access Counselor

Cc: Dr. Barbara Underwood, Carmel Clay Schools  
Seamus Boyce, Church, Church, Hittle & Antrim