

March 2, 2006

Dana Magura
9320 4th Place
Highland, IN 46322

Re: Formal Complaint 06-FC-34; Alleged Violation of the Access to Public Records Act by the School Town of Highland

Dear Ms. Magura:

This is in response to your formal complaint alleging that the School Town of Highland (“School”) violated the Access to Public Records Act by failing to respond in writing to your request for a record. I find that the School violated the Access to Public Records Act, but may have been justified in withholding the record.

BACKGROUND

You filed your formal complaint on February 6, 2006. In your complaint, you alleged that the School failed to return a written statement to you of the specific statutory reasons for nondisclosure of the document you requested on January 12, 2006. Since you submitted the document request in writing on January 12, 2006, the School’s response should have been in writing. You were called by the School on January 13, 2006 and told that your request was denied. You do not describe the record you sought.

I sent a copy of your complaint to the School. Mr. Joseph L. Curosh, attorney for the Board of Trustees for the School sent a written response, which I enclose for your reference. Mr. Curosh stated that your request was received by the School on January 27, 2006. On January 28, the School orally advised you that your request was denied. No written determination was issued around that time. On February 22, 2006, Mr. Curosh mailed to you a written denial of your request. The School denied your request under the Family Educational Rights and Privacy Act of 1974, also known as FERPA. The School cited 34 CFR Part 99, and Indiana Code 5-14-3-4 for the exemption that requires the record to be kept confidential pursuant to federal law.

ANALYSIS

Any person may inspect and copy the public records of any public agency, except as provided in section 4 of the Access to Public Records Act (“APRA”). Ind. Code 5-14-3-3(a). If a public agency receives a request for a record in person, the public agency is required to respond within 24 hours or the record is deemed denied. IC 5-14-3-9(a). If a request is made by U.S. Mail or facsimile, the request is deemed denied if the agency fails to respond within seven (7) days of receipt. IC 5-14-3-9(b). If a request is made orally, either in person or by telephone, a public agency may deny the request orally. IC 5-14-3-9(c). However, if a request initially is made in writing, or if an oral request that has been denied is renewed in writing or by facsimile, a public agency may deny a written request for a record if the denial is in writing and states the exemption or exemptions authorizing the public agency to withhold the record, and the name and title or position of the person responsible for the denial. IC 5-14-3-9(c).

There is a discrepancy with respect to when you delivered your request to the School. I also do not know whether your request was mailed or hand-delivered. In both your accounts, the School telephoned you the day after it received your request and told you it was denied. No written denial was issued until February 22. This written response was untimely because it was issued more than seven (7) days after the School contends it was received. The School’s failure to respond timely with a written denial that stated that the applicable exemption was a violation of the Access to Public Records Act. IC 5-14-3-9(c).

Also, I reviewed the February 22 written response of the School. It is well-drafted except in one respect: the School should have cited IC 5-14-3-4(a)(3) for records required to be kept confidential by federal law. The School cited only IC 5-14-3-4, which is a broader citation to some thirty-three exemptions under the APRA. This citation could not have apprised a person of the exemption that applied to the record; however, this omission was ameliorated by the School’s use of the text of the exemption.

You have not described the record you sought. The School maintains that you sought a student record. As cited by the School, FERPA protects from disclosure education records pertaining to a student. 34 C.F.R. §99.3. FERPA meets the exemption in the APRA for records required to be kept confidential by federal law. *See The Indianapolis Star v. Trustees of Indiana University*, 787 N.E.2d. 893, 904 (Ind. Ct. App. 2003). In any case, the School has the burden of proving that a record is confidential under the APRA. IC 5-14-3-9(f).

CONCLUSION

For the foregoing reasons, I find that the School Town of Highland did not timely and adequately respond to your request for a record, but otherwise did not violate the Access to Public Records Act from the limited allegations of your complaint.

Sincerely,

Karen Davis
Public Access Counselor

cc: Joseph L. Curosh