



# STATE OF INDIANA

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April 8, 2011

Ms. Carmen McCollum  
2080 N. Main St.  
Crown Point, IN 46307

*Re: Formal Complaint 11-FC-87; Alleged Violation of the Access to Public Records Act by the School City of East Chicago*

Dear Ms. McCollum:

This advisory opinion is in response to your formal complaint alleging the School City of East Chicago ("School Corporation") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* The School Corporation's response is enclosed for your reference.

## BACKGROUND

In your complaint, you allege that the School Corporation failed to disclose salary information for public school officials and personnel reports. You submitted requests on January 25, 2011, and February 8, 2011. The superintendent's assistant, Rosie Gomez acknowledged your requests, but you have not yet received the records despite several follow up contacts with the School Corporation office.

In response to your complaint, Superintendent Michael A. Harding states that the School Corporation has not yet produced a copy of the superintendent contract addendum because the school board's president has not yet signed the document. He states that the School Corporation "cannot forward a document without the board president's authorization." Nevertheless, Supt. Harding believes that you are already aware of the contract's contents and have published the same within the community. As to your request for a list of new hires, Supt. Harding claims that such information was forwarded to you on January 31, 2011. He further responds that the School Corporation does not possess an organizational chart other than for bus drivers and custodians. He notes that individual employee contracts are available for inspection and copying upon request. With regard to your request for information concerning School Corporation Chief Financial Officer Frank Ramirez, Supt. Harding claims that the School Corporation had not received such a request until it arrived attached to this complaint. As to the substance of that request, Supt. Harding states that Mr. Ramirez is not required to be licensed by the

State of Indiana. However, Supt. Harding enclosed bonding information regarding his employment with the School Corporation's response. Finally, Supt. Harding argues that some aspects of your request are more akin to investigations than records requests.

## 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 School Corporation does not contest that it is 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 School Corporation's public records during regular business hours unless the records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. I.C. § 5-14-3-3(a).

With regard to the School Corporation's denial of access to the contract addendum because it is unsigned by the board president, that is not a basis for withholding a record under the APRA. Previous opinions from this office have viewed draft or incomplete records as disclosable public records under the APRA. *See Opinion of the Public Access Counselor 08-FC-54; 06-FC-124; 05-FC-142; 98-FC-4*. In one such case, Counselor Neal reasoned:

Here the Auditor may sustain the denial by providing the statutory authority exempting the record from disclosure. The record is not exempted from disclosure merely by the fact that it is a draft or incomplete record. The APRA does not require a record to be in its final or complete form before it can be produced pursuant to a request.

*Opinion of the Public Access Counselor 08-FC-54*. Counselor Neal concluded that an auditor could not deny access to a deed simply because the deed had not yet been recorded; the deed existed and was maintained by a public agency, so it should have been disclosed unless an exception to the APRA permitted or required the auditor to withhold it. *Id.* Under the APRA, a public agency that withholds a public record bears the burden of proof to show that the record is exempt. I.C. §§ 5-14-3-1, 5-14-3-9(f) and (g). Exceptions to disclosure are narrowly construed. I.C. § 5-14-3-1. Because the School Corporation has not cited to a provision of the APRA or any other statute that provides it with the authority to withhold the contract addendum, it is my opinion that the School Corporation has not sustained its denial of access to that record.

As to your request for an organizational chart and other records that the School Corporation does not maintain, 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. *Op. of the Public Access Counselor 08-FC-34*. Consequently, the School Corporation did not violate the APRA by denying requests for records that do not exist or that are not maintained by the agency.

The School Corporation also claims, essentially, that some of your requests are not reasonably particular under the APRA. The APRA requires that a records request “identify with reasonable particularity the record being requested.” I.C. § 5-14-3-3(a)(1). “Reasonable particularity” is not defined in the APRA, but the public access counselor has repeatedly opined that “when a public agency cannot ascertain what records a requester is seeking, the request likely has not been made with reasonable particularity.” *Ops. of the Public Access Counselor 10-FC-57; 08-FC-176*. Moreover, the School Corporation need not respond to requests for general *information* because the APRA merely requires public agencies to produce non-confidential *records* for inspection and copying.

That said, because the public policy of the APRA favors disclosure and the burden of proof for nondisclosure is placed on the public agency, if an agency needs clarification of a request, the agency should contact the requester for more information rather than simply denying the request. *See generally* I.C. § 5-14-3-1; *Opinion of the Public Access Counselor 02-FC-13*.

As to your request for the salaries of a list of employees, the School Corporation need not create a list to satisfy that request. However, to the extent that you have requested records regarding specific employees, the School Corporation should provide you access to those records in accordance with subsection 4(b)(8) of the APRA, which provides that personnel files of public employees and files of applicants for public employment may be excepted from the APRA’s disclosure requirements, except for:

- (A) The name, compensation, job title, business address, business telephone number, job description, education and training background, previous work experience, or dates of first and last employment of present or former officers or employees of the agency;
- (B) Information relating to the status of any formal charges against the employee; and
- (C) The factual basis for a disciplinary action in which final action has been taken and that resulted in the employee being suspended, demoted, or discharged.

I.C. § 5-14-3-4(b)(8). I encourage the School Corporation to make such information available to you as soon as possible.

## CONCLUSION

For the foregoing reasons, it is my opinion that the School Corporation has not sustained its burden of proof to show that the contract addendum is exempt from disclosure under the APRA. Moreover, the School Corporation should release to you records that you requested regarding specific employees, but the School Corporation is not obligated by the APRA to respond to general inquiries. The School Corporation has not otherwise violated the APRA.

Best regards,

A handwritten signature in black ink that reads "Andrew J. Kossack". The signature is written in a cursive style with a large, sweeping initial 'A'.

Andrew J. Kossack  
Public Access Counselor

cc: Supt. Michael A. Harding