



# STATE OF INDIANA

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June 29, 2015

Mr. Rod A. Gardin  
P.O. Box 370  
502 East College Avenue  
Kouts, IN 46347

*Re: Formal Complaint 15-FC-162; Alleged Violation of the Access to Public Records Act by the Indiana Department of Education*

Dear Mr. Gardin,

This advisory opinion is in response to your formal complaint alleging the Indiana Department of Education (“DOE”) violated the Access to Public Records Act (“APRA”), Ind. Code § 5-14-3-1 *et. seq.* DOE has responded to your complaint via Ms. Kelly Bauder, Esq. Her response is enclosed for your review. Pursuant to Ind. Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on May 15, 2015.

## BACKGROUND

Your complaint dated May 14, 2015 alleges the Indiana Department of Education has violated the Access to Public Records Act by failing to provide the records you requested.

On March 4, 2015, you submitted your records request seeking all copies of Testing Irregularities reports for ISTEP+ testing for the 2014-2015 school year. On March 20, 2015 you clarified your request, asking for “a copy of each and every Testing Concerns and Security Violations Report submitted by any and all schools” participating in ISTEP+.

The DOE informed you it intended to comply with your request; however, time would be needed to comply with FERPA and any other applicable laws.

On March 30, 2015 you restated your request with greater particularity. In your April 10, 2015 correspondence, you noted the DOE failed to acknowledge your request within the



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seven (7) day requirement and that you “must now” file a complaint with this Office. You contend Ms. James’s failure to respond constitutes a denial under APRA.

In its response, counsel notes the DOE currently has approximately sixty (60) APRA requests pending and that the DOE still intends to comply with your request.

## ANALYSIS

The public policy of the APRA states that “(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.” See Ind. Code § 5-14-3-1. The Indiana Department of Education is a public agency for the purposes of the APRA. See Ind. Code § 5-14-3-2(n)(1). Accordingly, any person has the right to inspect and copy the DOE’s disclosable public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. See Ind. Code § 5-14- 3-3(a).

*There are two issues here: 1) Whether the DOE provided timely acknowledgement of an alleged request 2) whether the DOE provided timely production of disclosable documents.*

First, there appears to be an issue of timing with regard to the acknowledgment. Your original request was submitted on March 4, 2015. You noted the testing window would close on March 13, 2015. You received an acknowledgement of your request on March 4, 2015.

On March 18, 2015, you contacted DOE checking the status of your request, at which point it stated there would be a delay, because the DOE would have to redact information to comply with FERPA. On March 24, 2015, DOE informed you there would be a delay because it may still be receiving reports.

On March 30, 2015 you clarified your request. DOE responded on April 11, 2015. This correspondence appears to be the correspondence at issue. You alternatively claim your March 30, 2015 correspondence did not reset the clock on your request and that the DOE failed to acknowledge your request.

These claims appear to be contradictory. If March 30, 2015 acted as a new request, it did reset the clock on the agency response. If March 30, 2015 did not act as a new request,



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then the March 4, 2015 acknowledgement suffices. I will note you appear to be requesting substantially the same information and your complaint fails to state the March 30, 2015 request was indeed a new request. Therefore, I find the March 4, 2015 acknowledgment was sufficient and there does not appear to be a violation.

DOE did inform you of potential delays from the beginning. This Office is familiar with the substantial amount of public records requests DOE receives. That being said, this request was approaching 90 days at the time of the filing of your formal complaint. While the request was sufficiently complex and other factors were at play preventing a more immediate response, DOE should be mindful of its responsibility under the APRA to be efficient when responding to requests. It is my sincere hope the records have already been released to you.

Regards,

A handwritten signature in black ink, appearing to read "LHB", written over a horizontal line.

Luke H. Britt  
Public Access Counselor

Cc: Ms. Kelly Bauder, Esq.