



STATE OF INDIANA

MICHAEL R. PENCE, Governor

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December 16, 2015

Ms. Alice Butler
1773 Summerlin Place
Jeffersonville, IN 47130

Re: Formal Complaint 15-FC-294; Alleged Violation of the Access to Public Records Act by the Greater Clark County Schools

Dear Ms. Butler,

This advisory opinion is in response to your formal complaint alleging the Greater Clark County Schools ("GCCS") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et. seq.* The GCCS responded via Dr. Andrew T. Melin, PhD., Superintendent. His 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 October 27, 2015.

BACKGROUND

Your complaint dated October 27, 2015 alleges the Greater Clark County Schools violated the Access to Public Records Act by not providing you with records you requested.

Between September 11 and October 23, 2015, you requested a series of documents from GCCS relating to information addressed in *Advisory Opinion of the Public Access Counselor 15-FC-149*. The *Opinion* is hereby incorporated by reference. The information you seek is different from *Advisory Opinion 15-FC-149* in that it seeks ancillary documentation authorizing and paying for a feasibility study. You sought an invoice from a public opinion polling firm, as well as a contract with a consultant. You also express dissatisfaction with Ind. Code § 5-14-3-4(b)(6) which exempts deliberative materials from disclosure.

GCCS responded to your formal complaint by reiterating it does not have some of the materials you seek, but has exercised discretion to withhold other deliberative materials supplemental to the feasibility study and the results of a public opinion poll.



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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 Greater Clark County Schools 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 GCCS’ 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).

The feasibility study in question appears to relate to an initiative to improve school security and safety measures. To the extent it does, it stands to reason GCCS would want to exercise discretion to withhold such information. The legislature has carved an exception to disclosure for materials containing school safety and building specifications. See Ind. Code § 5-14-3-4(b)(18). Any communication or speculation adjacent to such information would ostensibly need to be withheld as well in order to safeguard student safety should such a building effort come to fruition. This kind of communication would fall under Ind. Code § 5-14-3-4(b)(6).

But that type of information is mutually exclusive from any contract, expenditure or appropriation to or with a contractor, vendor or consultant. Actual expenditures of public monies reflected on invoices or contracts should be unequivocally released upon request. From the information provided, it appears as if you received the invoice you were seeking from the public opinion firm. The contract with the consultant expired and was not renewed; therefore, there was nothing new to produce in regard to his services.

GCCS speculates you were seeking information related to polling data in addition to the invoices and contracts. To the extent you were seeking that information, GCCS states it also falls under the deliberative materials exception to disclosure. This Office has found in the past polling data could indeed be considered deliberative. *See Opinion of the Public Access Counselor 14-FC-49: ([A] poll would be an expression of public opinion provided to the [public agency] by a private contractor for the purposes of decision making.)*

You devote the final portion of your complaint to your displeasure with the deliberative materials statute. I do not necessarily disagree with your position; however, there is little this Office can do to remedy the problem. The deliberative materials exception is broad and can be (and often is) abused by public agencies seeking to hide information. I cannot



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say this is the case in the present circumstance, but I encourage public agencies to be judicious in exercising any exception to disclosure, including deliberative materials. Public access fosters accountability which leads to good governance and sound stewardship of public resources. It has been said the 4(b)(6) exemption is the exception which swallows the rule and from a public policy perspective it is indeed a slippery slope. The deliberative materials exception should only be used when necessary to maintain the integrity of the free expression of opinions and ideas between public officials engaged in the decision-making process.

CONCLUSION

Based on the foregoing, it is the determination of the Office of the Public Access Counselor the Greater Clark County Schools has not violated the Access to Public Records Act.

Regards,

A handwritten signature in black ink, appearing to read "LH Britt", written in a cursive style.

Luke H. Britt
Public Access Counselor

Cc: Dr. Andrew T. Melin, PhD.