

November 15, 2004 Guidance to Charles A. Beard Memorial School Corporation; Redaction of State Fire Marshal Report

November 15, 2004

Mr. E. Edward Dunsmore  
18 North Jefferson Street  
P.O. Box 155  
Knightstown, IN 46148-0155

*Re: Informal Inquiry Response*

Dear Mr. Dunsmore:

This is in response to your request that I issue you a letter stating my position with respect to the disclosure of a certain document by the Superintendent of the Charles A. Beard School Corporation to *The Banner* newspaper in November, 2004.

#### BACKGROUND

On October 25, 2004, *The Banner* requested four categories of records from the Charles A. Beard School Board (“CAB”). This informal inquiry concerns item #3, which requested, in pertinent part:

Copies of any written correspondence sent or received by or on behalf of the school corporation or high school building corporation with respect to the courtyard area at the new high school...”

As part of the production in response to this request, CAB produced a document dated August 26, 2003, on letterhead of the Indiana State Fire Marshall’s office. The title of the document is “Notice of Violations Order” and it is directed to the CA Beard Memorial School Corporation, Mr. Hal Jester (the superintendent). The document contains an introductory paragraph and then three headings across the page. Under the headings, there appears one “Description of Violation” together with the citation to the code violated and the date on which the violation must be remedied. The violation listed in this document regards the courtyard.

All parties agree that this document deviates from the original “Notice of Violations Order” of August 25, 2003, in that the original document contains some 16 other violations. The other violations do not pertain to the courtyard. Therefore, this is a partial, or redacted, document. *The Banner* obtained the complete document from the State Fire Marshal’s office, which ran 8 pages long. Nothing in the copy of the document from CAB, nor in the cover letter or any other communication by CAB explained the nature of the document provided by the CAB, that is, that it was a partial document that pertained just to the request made by *The Banner* for correspondence with respect to the courtyard area. It was not until *The Banner* obtained the copy from the State Fire Marshal’s Office that it became aware of the redaction.

Upon inquiry of *The Banner* last week, I opined that in giving *The Banner* a document that had been redacted without explaining why it had redacted it, or even *that* it was redacted, CAB had violated the Access to Public Records Act. You have called me to discuss the basis for my opinion, and have asked me to issue an informal written response. I explain more fully my basis for this determination below.

## ANALYSIS

The Access to Public Records Act states that “...it is the public policy of the state that all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees.” In addition, APRA states that the Act shall be liberally construed to implement this policy. IC 5-14-3-1.

APRA allows an agency to redact documents when it is necessary to protect confidential information but effectuate openness; in particular, an agency is required to separate the disclosable parts of a document from the nondisclosable portions of the document. IC 5-14-3-6. Also, APRA requires an agency that is denying a record *or part of the public record* to explain its authority for denying the record. IC 5-14-3-9(c)(2).

The issue is whether the agency has violated APRA by supplying the requester with a portion of a record that is narrowly responsive to the request, removing all traces of other parts of the original document without disclosing the extent and basis for the redaction. I opine that an agency has violated APRA under those circumstances.

First, I note that the request specifically seeks “copies of any written correspondence sent or received by or on behalf of the school...with respect to the courtyard area...” The request by its terms does not limit itself to only those parts of written correspondence that pertain to the courtyard area of the high school. Rather, the request is for written correspondence that contains a reference to a particular subject matter, the courtyard area. Therefore, I do not think the CAB can justify its proffering a partial record by stating that it was disclosing precisely what *The Banner* sought and nothing more.

Moreover, IC 5-14-3-9(c) provides that an agency may deny a written request if the denial is in writing and if the denial includes a statement of the specific exemption or exemptions authorizing the withholding of all or part of the public record. You have argued that this

provision is not applicable to the CAB in this instance because the CAB did not deny a record; it merely provided only that part of the record that contained the violation regarding the courtyard. In my opinion, section 9 as well as the APRA's statement of purpose requires that an agency be forthcoming when providing a partial copy of a public record to make it clear that the record has been redacted, and the reason for the redaction. Accordingly, my opinion is not that the CAB violated APRA by providing only a partial record. Rather, it was a violation to provide a partial record **and** take no steps to inform the requester that the record provided had been redacted or was an abstract of a record. In this case, the redaction was substantial, and appears to have been done in such a way as to create an impression that it was the complete, entire record. This is because the heading for "Violation Number" was removed, as was the violation number corresponding to the courtyard area, #16. Also, the CAB gave no basis for redacting the record, such as a letter stating that the remainder of the "Notice of Violations Order" did not pertain to the courtyard, and was therefore not being provided.

Section 9(c) clearly contemplates that an agency that withholds part of a record is denying the record, and it states that the agency must state the basis for the denial. The fact that, as you have conceded, the record is disclosable in its entirety and therefore the CAB was not required to state its basis for nondisclosure would turn the APRA on its head.

#### CONCLUSION

In my opinion, the CAB violated the Access to Public Records Act by disclosing a redacted version of a public record without stating the basis for withholding the remainder of the original record, or without informing *The Banner* that the record was a redacted record in the first instance.

Sincerely,

Karen Davis  
Public Access Counselor

cc: Jeff Eakins